



To: Suramy Cabrera, Development Services Director

From: Miriam Soler Ramos, City Attorney for the City of Coral Gables *MSR*

Date: January 28, 2020

Re: Legal Opinion regarding Bahamian Village Site Plan

The following opinion addresses the administrative approval of a site plan that modifies a previously approved project located on the undeveloped portion of the site owned by Bahamian Village LLC (“Bahamian Village”) where the LBW Homeowner’s Foundation of Coral Gables Community Center is currently located. Full administrative review of the proposed project will be conducted once a building permit application submitted and construction drawings are submitted.

I. Background

In September 2014, the City Commission approved a Planned Area Development (PAD) and site plan (attached hereto as Exhibit A) for a project referred to as “Gables Pointe Plaza” (the “Project”)¹ (see Ordinance No. 2014-21) and the approval set forth conditions as well as allowances. The Project consisted of two phases: (1) a community center facility and office space located on the east side of the Property (“Phase One”), and (2) a proposed restaurant located on the west side of the Property adjacent to US-1 (“Phase Two”).

Due to significant delays in the redevelopment of the Property, litigation ensued. In December 2015, the City Commission adopted Resolution No. 2015-303 which acknowledged the importance of the geographic area of the City known as the MacFarlane Homestead Historic District, in which the Project was to be developed, the delays relating to development of the Project, and the litigation which existed at the time between Miami-Dade County (the “County”) and the LBW Homeowners Foundation of Coral Gables, Inc. (the “Foundation”) regarding the building of the community center; urged the County to reach a settlement that would allow for the

¹The proposed project was to be located on the real property described as: Lots 7 through 27, Block 1B of MACFARLANE HOMESTEAD AND ST. ALBAN’S PARK SECTION (280 SOUTH DIXIE HIGHWAY) (the “Property”) less what is commonly known as the Grand Avenue Right of Way.

completion of the Project; and authorized the City Manager and City Attorney to take all necessary action to facilitate resolution of the dispute between the County and the Foundation, including invocation of dispute resolution processes and expediting any further reviews of the Project.

In April 2017, the former City Attorney was asked whether Resolution No. 2015-303 allowed modifications to the site plan for the Project to be approved administratively. In response, he authored CAO 2017-011 stating that the City Manager and City Attorney are granted all administrative and legal authority to resolve the matter, which includes administrative approval of modifications to the site plan.

On November 16, 2017, the City, which had intervened in *Bahamian Village LLC, et al. v. Miami-Dade County*, 2015-015755-CA-01, entered into a settlement agreement with Plaintiffs Bahamian Village LLC and Debra Kolsky as Trustee, relating to the development of the Project (the “Settlement Agreement”). In the Settlement Agreement, the City agreed to, among other things:

- Waive all building permit fees (which include fees charged to contractors, subcontractors, and sub-subcontractors) including any and all impact fees and Art in Public Places fees for the remaining phases;
- Expedite the review and approval process for any site plan modifications and require only one submission to the Board of Architects and no further public hearings (including hearing before the Planning and Zoning Board);
- Complete any and all approvals of proposed site plan modifications administratively by the City Manager (or designee) and City Attorney, as stated in Resolution 2015-303;
- Approve a drive-through for Phase 2, provided that Bahamian Village agree to comply with the City standards for Conditional Use for drive-through operations without the obligation of a conditional use application and hearing process; and
- Reassign the address identified as 220 Florida Avenue to 218 Grand Avenue, once Bahamian Village installs vehicle access on Grand Avenue as part of Phase 2.

II. Proposed Modification of the Site Plan

In July 2017, Phase 1 of the Project was completed, however, Phase 2 remains undeveloped. Representatives of Bahamian Village have met with the City Attorney and City Manager and presented a new project that requires significant modification of the site plan for Phase 2 of the Project. The prior approval of the site plan for a restaurant, with a substantial outdoor dining area, allowed for the restaurant to operate Sunday through Thursday from 9 a.m. until 1 a.m. the following day, and Friday and Saturday from 9 a.m. until 2 a.m. the following day.

The new project consists of a food market/convenience store/gas station called Wawa. Wawa, Inc. is a privately held company that opened its first store in 1964 and today owns 750 convenience retail stores. Wawa distinguishes itself from most convenience stores in that it offers a large fresh food selection which includes built-to-order hoagies, fresh coffee, hot breakfast sandwiches, bakery items, soups, sides, wraps, salads, and snacks. In addition, Wawa prides itself

in providing fresh fruit and vegetables also commonly not available at traditional convenience stores.

The site plan (attached hereto as Exhibit B), places the Wawa building along US-1 wholly in the part of the Phase 2 parcel that is zoned Commercial (C) and includes an outdoor seating area. The parking lot and six (6) gasoline pumps are placed behind the Wawa building, between the Wawa building and the already-completed Phase 1 Community Center. In addition, the project may provide Tesla charging stations on site. Two (2) out of the six (6) gasoline pumps are to be located in the portion of the parcel that is zoned Commercial Limited (CL). Ingress and egress are provided along Grand Avenue and Florida Avenue and the entrance/exit along Florida Avenue is positioned away from the single-family homes that face the Project and will be closed, with a metal gate, to vehicular traffic from 10 p.m. to 6 a.m. every day of the week. Wawa agrees that no deliveries will be made after 10 p.m. and that all gasoline deliveries will be made off of Grand Avenue (which is not across from a residential district).

Section 4-301(D)(6)(b) of the Zoning Code does not allow customer access for nighttime uses which are visible from land designated as a residential district from 8:00 p.m. to 6:00 a.m. In addition, Section 4-301(E)(3) of the Zoning Code provides that no deliveries are permitted between 8:00 p.m. and 6:00 a.m. As previously stated, the underlying PAD approval allowed for restaurant operations, a more intense use, far exceeding 10 p.m.

Wawa operates 24-hours; however, the use is far less intense in the overnight hours than the restaurant approved in the underlying PAD ordinance which included an outdoor dining area where patrons could gather until at least 1 a.m. while consuming alcoholic beverages.

The site plan also provides a 4-foot wall together with 6-foot tall landscape buffer (at the time of planting) to shield the surrounding neighborhood from the commercial activity which exceeds the requirements of Section 4-301(E)(1) of the Zoning Code and the underlying PAD Ordinance. In addition, it provides for trees with a height of at least 14 feet at intervals of not less than 10 feet, surrounding the property although not required by Section 4-301(E)(5) of the Zoning Code because there is no common property line shared. While Section 4-301(J)(8) of the Zoning Code requires conditional use approval for nighttime uses within 150 feet of a residential parcel, the nighttime use for this Project was already approved by the City Commission in the underlying PAD approval ordinance.

III. Approval of the New Site Plan

In accordance with Resolution No. 2015-303 and the Settlement Agreement, the new site plan is to be approved by the City Manager and the City Attorney through their authority delegated by the City Commission and Sections 2-701 and 2-702 of the City's Zoning Code. While a portion of the Property is zoned CL, the Settlement Agreement provides specifically that Phase 2 of the Project requires commercial development, both parcels allow for such, and the Project in the proposed site plan is a reasonable use of the area. In addition, development of the site is and has been a predominant interest.

The proposed project may reasonably fall under two categories of the Zoning Code: (1) automobile service station and (2) convenience retail. Section 4-301(I) lists the uses that are permitted in the Commercial Limited District. Specifically, Section 4-301(I)(19) of the Zoning Code provides:

Building sites unified by a recorded Unity of Title filed prior to the enactment of this Zoning Ordinance and which, as a result of the enactment of this Zoning Ordinance, are zoned Commercial (C), in part, and Commercial Limited (CL), in part, are permitted to have Commercial (C) uses on the portions of the property designated Commercial Limited (CL), except for the following:

- a. Medical clinics in excess of ten-thousand-five-hundred (10,500) square feet of floor area.
- b. Drive through facilities.
- c. Sale of alcohol other than as an accessory use.
- d. Nightclubs.

The Zoning Ordinance adopted in 2007 changed the zoning from CB (formerly Commercial) to CL for the affected parcel. On January 6, 2006, a Declaration of Restrictive Covenants (attached hereto as Exhibit C) was recorded which tied 231 Grand Avenue, 330 South Dixie Highway, 238 Florida Avenue, 226 Florida Avenue, 222 Florida Avenue, and 218 Florida Avenue together. Those addresses make up what is referred to as the Project. *Accordingly, Section 4-301(I)(19.) is implicated and expressly permits a Commercial use on a site that is partially zoned C and partially zoned CL.*

“Automobile service station” is defined as:

any building, structure, or lot used for the following: dispensing or offering for retail sale gasoline, kerosene, lubricating oil, or grease for the operation and maintenance of vehicles. This may include buildings or structures that are used for the retail sale and direct delivery to motor vehicles of cigarettes, candy, soft drinks and other related items for the convenience of the motoring public, and may include facilities for lubricating, minor repairs or vehicle service. Such establishments shall not include facilities for major vehicle repair.

Zoning Code, Article 8.

While the proposed project could fall under the “Automobile service station” category, which are permitted outright in areas zoned C (and as a conditional use in areas zoned CL for reconstruction), given that Wawa engages in the retail sale of gasoline, it may also equally fall under the category of “convenience retail,” Article 8, Zoning Code, which is permitted as “retail” in areas zoned CL.

“Convenience retail” is defined as: “any retail establishment offering for sale **grocery** and household items, newspapers and magazines, **gasoline** and other auto products, **food products, incidental sales of cooked food or site-prepared food** ready for serving off premises, and similar item.” Article 8, Zoning Code. (emphasis added) The proposed Project fits well into this category.

As stated above, the main commercial building is located wholly within the portion of the parcel that is zoned C and it includes the most intense use. A portion of the area used for gasoline pumps and parking – the lesser intense use - is the only part of the Project located in the CL portion of the parcel. Pursuant to Section 4-301(I)(14) of the Zoning Code, retail is permitted in CL. While ideally, the store building would be on the CL portion of the parcel with the gasoline pumps and parking on the C portion, that configuration is not possible as there is a linear park (the Park) that runs parallel to the parcel between US-1/South Dixie Highway and the parcel. The existence of the Park makes ingress and egress impossible, yielding the operation of the gasoline pumps inefficient and ineffective.

The new proposed site plan shows a detached roof over the gasoline pumps. A preliminary zoning review flagged this roof as a potentially non-compliant detached canopy. However, the detached roof is consistent with Section 5-201(F) of the Zoning Code providing that “the roof of an automobile service station and auxiliary buildings shall be of tile, pitched and shall extend from the station over the gasoline pumps.” Alternatively, Sec. 5-302 of the Zoning Code, titled “Standards for awnings and canopies in residential and non-residential zoned districts, provides:

B. Commercial Limited (CL and C), Industrial, and University Campus District (UCD) zoning districts.

3. Free-standing canopies. No permanent self-supporting or freestanding shelter canopy, carport canopy or entrance canopy shall be permitted.

Shelter canopy, “means a roof-like covering, intended and used for the purpose of sheltering from the rays of the sun and from rain and weather **exclusive of vehicles**, either persons or inanimate objects. Shelter canopies are partially or entirely supported from the ground up.” (emphasis added) (Article 8, Zoning Code) Carport canopy, “means a structure that consists of a roof supported on posts or columns that provides shelter for one (1) or more motor vehicles.” Merriam-Webster dictionary defines “carport” as “an open-sided automobile shelter by the side of a building.” Finally, entrance canopy is defined in the Zoning Code as “canopy entrance” and “means a canopy intended and used for the purpose of sheltering persons or inanimate objects from the rays of the sun and from rain and weather,” and is logically intended to refer to canopies that are at the *entrance* of a building. The detached roof that is shown in the new proposed site plan does not fit any of the three definitions included above.

The new proposed site plan provides for an outdoor seating area off Grand Avenue, not explicitly intended for dining. Sec. A-66 of the Zoning Code requires a minimum setback of 20 feet from Grand Avenue for outdoor dining area/trellis, picnic table area and all paved areas other than walkways and driveways. However, in the underlying PAD approval, allowed for the proposed restaurant with a setback of 3 feet, 9 inches from Grand Avenue. The new proposed site plan reduces the encroachment into the setback by 3 feet. Accordingly, the new proposed site plan does not use the entire allowance provided for in the underlying PAD ordinance.

In addition, the site plan complies with the requirements of Section 4-301 of the Zoning Code and is consistent with the City’s Comprehensive Plan.

While, pursuant to Section 5-702(A), alcoholic beverage sales (package) are not permitted upon premises closer than 500 feet from any religious institution or school without approval of the

Board of Adjustment, Article 8 of the Zoning Code defines “alcoholic beverage sales” as consisting of 25 percent or more of the floor area occupied by the display of alcoholic beverages. Wawa has provided assurance that the percentage of the floor area occupied by alcoholic beverages at this site will not exceed 5 percent and that it will only sell beer and wine. In addition, no alcohol consumption will be allowed on the premises.

The underlying PAD ordinance also required an air-conditioned trash room, consistent with Section 5-1701 of the Zoning Code which states, “new commercial construction or renovation of an existing commercial structure, the use of which involves food products (such as restaurants, cafeterias, etc.), where the cumulative cost of such renovation is in excess of twenty-five (25%) percent of the assessed value of the existing commercial structure shall make provisions for the installation of an air conditioning system for commercial trash containers.” Wawa will be providing an air-conditioned trash room.

In accordance with Sec. 1.9 of the Settlement Agreement, the City approved the placement of a lighted monument sign consistent with the Zoning Code (Section 5-1905) within the Park Easement and the City agreed to maintain the Park. In accordance with said provision of the Settlement Agreement, Bahamian Village will place the lighted monument sign for the Community Center in the Park to be maintained by it. The proposed sign for Wawa, as approved by the BOA, complies with the Zoning Code and applicable state statutes.²

The underlying PAD approval requires the completion of certain traffic circulation improvements prior to the issuance of the final Certificate of Occupancy. Wawa must comply with those requirements unless an alternate plan is approved by Miami-Dade County.

Also, the restrictive covenants that currently exist on the property should be amended to add the following conditions which are either required by the Zoning Code, proffered by Wawa, or the City Manager feels are reasonably necessary to protect the City and surrounding neighborhood:

- 4-foot tall Masonry wall along the North and East sides of the property (with the exception of the area in front of the Community Center) to protect the residential neighborhood;
- 6-foot tall hedge at time of planting, as required by Sec. 4-301(E)(1) of the Zoning Code setting forth performance standards for nighttime uses;
- Trees with a height of at least 14 feet, at intervals of not less than 10 feet, around the property as required by Sec. 4-301(E)(5) as proffered by Wawa;
- Any illuminated signage is restricted to US-1 and the sign just above the front door, so as not to affect the residential properties along Florida Avenue and as consistent with Sec. 4-301(E)(6) of the Zoning Code;
- Deliveries are not permitted between 10 p.m. and 6 a.m. consistent with the underlying PAD approval.;
- Reserve within the parking lot the provided off-street parking spaces for each of the buildings and place bollards at each parking space abutting the community center;

² The City’s position with regard to Sec. 553.79(20)(a), F.S. is set forth in CAO 2017-055.

- Provide a pedestrian and vehicular circulation showing the proposed circulation system of surrounding streets and driveway access to the property, vehicular circulation within the property, and pedestrian and transit systems as required by Zoning Code Section 3-505(D)(3)(b) excluding a sidewalk on Florida Avenue due to the size of the landscape buffer; and
- Proposed landscaping plan shall require review and approval by the Directors of Public Service and Planning and Zoning for substantial compliance with the Zoning Code.

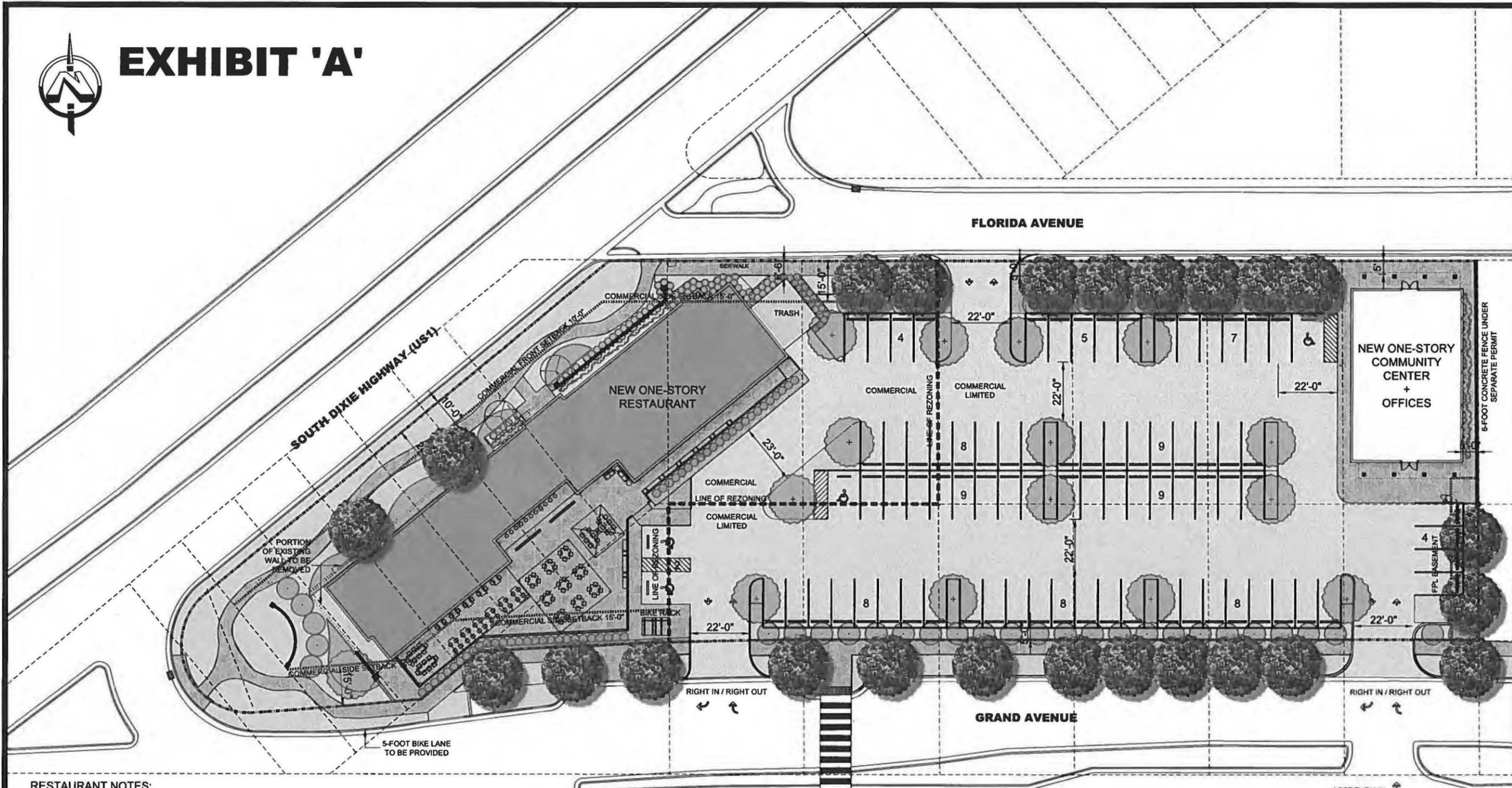
It is important to note that the adjacent property owners are very much in favor of the Project and have provided evidence of their support in writing (attached hereto as Exhibit D). In addition, Bahamian Village has agreed to provide mailed notice enclosing this opinion to all property owners within a radius of 1,000 feet of the Project.

In consultation with the City Manager and staff, this opinion is issued pursuant to the Settlement Agreement, Sec. 2-252(e)(1) and (8) of the City Code, and Sec. 2-702 of the City's Zoning Code and is based on a specific set of facts only present on the parcel of land discussed and relating to the proposed Project and is not intended to be applied generally or to other parcels or projects. This opinion modifies the PAD approved in Ordinance No. 2014-21 and the corresponding site plan. Unless otherwise modified by this opinion, all relevant conditions of the PAD approval remain unchanged and in full force and effect and the Project must also comply with applicable provisions of the Florida Building Code, the City Code, and the Zoning Code (unless otherwise addressed in this opinion).

January 2020



EXHIBIT 'A'



GABLES POINTE
BAHAMIAN VILLAGE LLC
280 SOUTH DIXIE HIGHWAY
CORAL GABLES, FLORIDA

RESTAURANT NOTES:

OUTDOOR DINING SHALL NOT OCCUPY AN AREA OF MORE THAN 30% OF THE PUBLIC INDOOR DINING AREA OF THE RESTAURANT AS SET FORTH IN 5-119.A.3

RESTAURANT HOURS OF OPERATION ARE 9 AM-1 AM SUNDAY - THURSDAY AND 9 AM - 2 AM FRIDAY AND SATURDAY.

PARKING REQUIREMENTS

RESTAURANT	1,000 SF / 12 SPACES = 6.068 x 12	73 SPACES
OFFICE	(1:300) = 1,256 SF / 300	4 SPACES
COMMUNITY	(1:250) = 1,400 SF / 250	6 SPACES
REQUIRED		83 SPACES
PROVIDED		81 SPACES

ZONING DATA:

LOT AREA	59,370 SF
BUILDING AREA	9,629 SF TOTAL 6,626 SF RESTAURANT 347 SF TRASH 2,656 SF COMMUNITY CENTER
PARKING LOT AREA	28,756 SF
LOT COVERAGE	64% - BUILDINGS AND PARKING
LANDSCAPE AREA	36% - 20,985 SF
HEIGHT	COMMUNITY CENTER: 24'-0" RESTAURANT: 36'-2"

SETBACKS

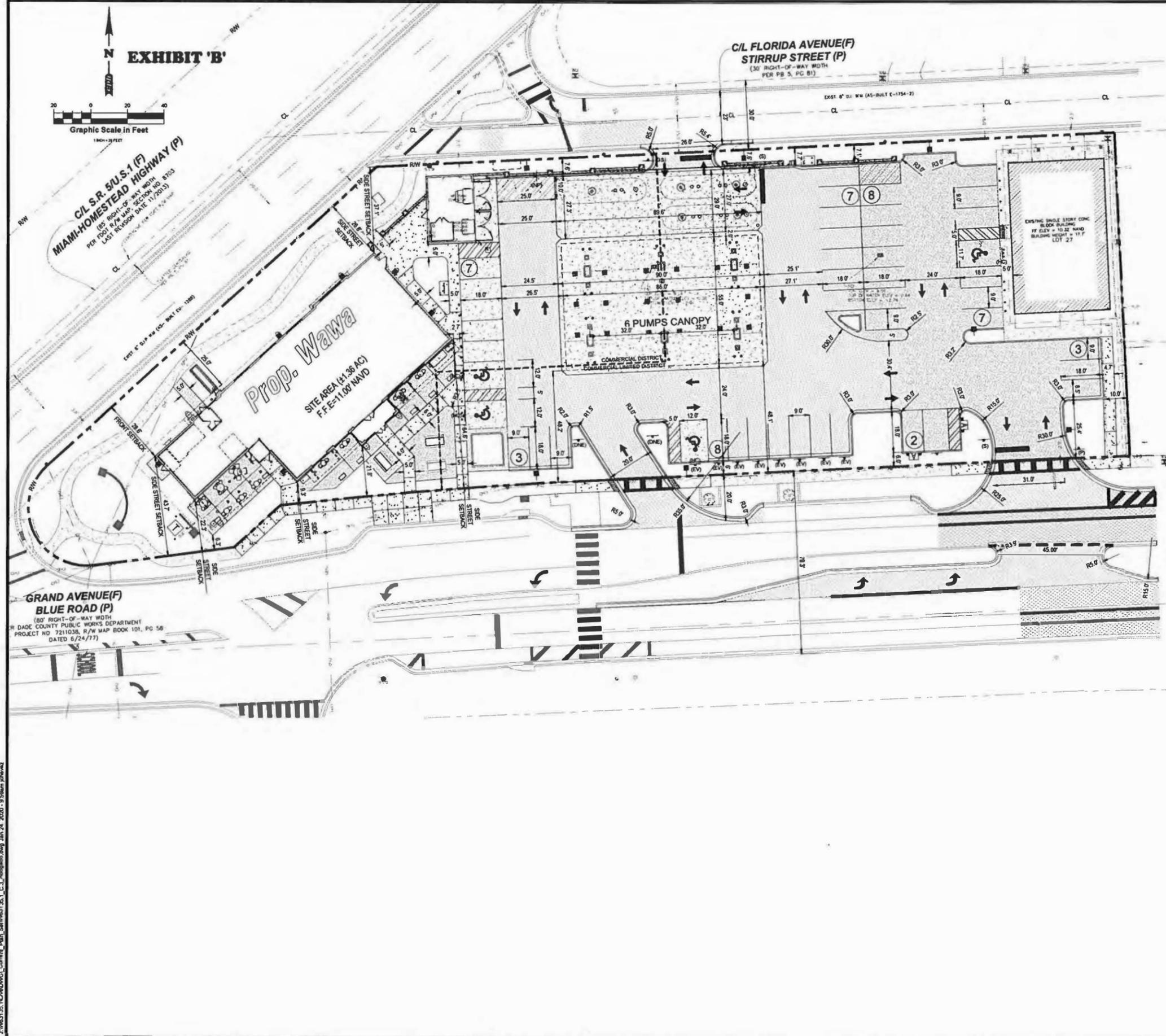
	REQUIRED	PROVIDED
COMMUNITY CENTER (CL)		
FLORIDA AVE	0 FT	5 FT
INTERIOR SIDE	0 FT	5 FT
RESTAURANT (C)		
US1	10 FT	25 FT +
GRAND AVE	15 FT	3'-9"
FLORIDA AVE	15 FT	6'-6"



SITE PLAN

SCALE: 1" = 40'-0"

A-0.3



SITE DATA
 STATEMENT OF INTENT: THE OWNER PROPOSES TO CONSTRUCT A NEW 5,837 SF WAWA CONVENIENCE STORE AND GAS STATION. PROPOSED LOCATION: 220 FLORIDA AVE IS THE WEST SIDE OF THE PROPERTY AT THE DESIGNATED PARK EASEMENT BOUNDARY WITHIN THE EASEL OPUS OF PREVIOUSLY APPROVED RESTAURANT. AN EXISTING 2,700 SF COMMUNITY CENTER, ON THE EAST SIDE OF THE PROPERTY SHALL REMAIN. IMPROVEMENTS SHALL INCLUDE ADDITIONAL UTILITY CONNECTIONS, STORM WATER MANAGEMENT, PARKING RECONFIGURATION FOR THE EXISTING COMMUNITY CENTER, PARADES FOR PROPOSED WAWA DRIVE ASBLE INTERCHANGES AND PEDESTRIAN ACCESS CONNECTIONS.

SITE ADDRESS:	218-220 FLORIDA AVE CORAL GABLES FL 33133
PLAT NUMBER:	03-4120-006-1730
SITE TOTAL AREA:	59,101 SF (1.36 ACRES ±)
EXISTING ZONING:	COMMERCIAL LOW-RISE LIMITED
PROPOSED ZONING:	COMMERCIAL LOW-RISE LIMITED
EXISTING LAND USE:	COMMERCIAL LOW-RISE LIMITED
FUTURE LAND USE:	COMMERCIAL LOW-RISE INTENSITY (MAX BUILDING HEIGHT 50 FEET; 3.0 F.A.R.)
BUILDING HEIGHT:	PROPOSED MAX 35' 50'
BUILDING AREAS:	EX. COMMUNITY CENTER: 2,700 SF PROPOSED WAWA: 5,837 SF
EXISTING AREAS:	EX. COMMUNITY CENTER: 2,700.00 SF (0.08 AC) 4.57% PERVIOUS: 48,817.85 SF (1.08 AC) 78.28% IMPERVIOUS: 9,151.15 SF (0.22 AC) 15.38% TOTAL: 56,133.00 SF (1.36 AC) 100.00%
PROPOSED SITE AREAS:	PROPOSED EXIST. COMMUNITY CENTER: 2,700 SF (0.08 AC) 4.57% PROP. WAWA: 5,837 SF (0.13 AC) 9.88% IMPERVIOUS: 35,803.29 SF (0.82 AC) 60.59% PERVIOUS: 14,882.71 SF (0.34 AC) 25.37% TOTAL: 58,133.00 SF (1.36 AC) 100.00%
MAX FLOOR AREA RATIO:	EXISTING: 21.8 (46.8%) PROPOSED WAWA: 10.2 (18.6%) TOTAL SITE: 7.5 (12.4%)
REQUIRED PERVIOUS AREA:	20%
LANDSCAPE SETBACKS:	REQUIRED PROVIDED NORTH: 7' 7.7' WEST: 5' 5' EAST: 7' 10.7' SOUTH: 7' 6.9'
ZONING SUBJECT SITE:	LIMITS OF CONSTRUCTION: COMMERCIAL LOW-RISE LIMITED SPECIAL USE (S), SINGLE FAMILY RESIDENTIAL (SFR) EAST: RESIDENTIAL LOW-RISE LIMITED SOUTH: SPECIAL USE (S) WEST: FOOT ROW, INDUSTRIAL (I)
FLOOD ZONE:	THE AREA DESCRIBED PROPERTY APPEARS TO BE IN ZONE X, IN ACCORDANCE WITH THE FIRM MAP OF MIAMI-DADE COUNTY, COMBINATION PANEL NUMBER 457 OF 1031, MAP NUMBER 128800457, REVISED SEPTEMBER 11, 2009.
BEER AND WINE:	BUILDING AREA: 5,837 SF BEER AND WINE AREA: 187 SF PERCENT BEER & WINE: 2.3%

GENERAL NOTES

- BASES, ANCHOR BOLTS, CONDUIT, AND WIRING FOR ALL OTHER SIGNS ARE BY THE GENERAL CONTRACTOR.
- PROPOSED UTILITIES ARE SHOWN IN SCHEMATIC ONLY. EXACT LOCATIONS SHALL BE DETERMINED TO ALLOW FOR THE MOST ECONOMICAL INSTALLATION.
- THE CONTRACTOR SHALL COORDINATE WITH ALL UTILITY COMPANIES TO DETERMINE EXACT POINT OF SERVICE CONNECTION AT EXISTING UTILITY. REFER TO THE BUILDING ELECTRICAL AND PLUMBING DRAWINGS FOR UTILITY SERVICE ENTRANCE LOCATIONS, SIZES AND CIRCUITING.
- ALL ELEVATIONS SHOWN ARE IN REFERENCE TO THE BENCHMARK AND MUST BE VERIFIED BY THE GENERAL CONTRACTOR AT GRADEBREAK.
- FINISH WALK AND CURB ELEVATIONS SHALL BE 6" ABOVE FINISH PAVEMENT.
- ALL LANDSCAPE AREAS SHALL BE ROUGH GRADED TO 6" BELOW TOP OF ALL WALKS AND CURBS.
- LOT LIGHTING CONCRETE FOOTINGS TO CONFORM WITH THE SOILS REPORT RECOMMENDATIONS FOR THIS PARTICULAR SITE.
- DIMENSIONS SHOWN ARE TO THE FACE OF CURB UNLESS SHOWN (BOC) WHICH INDICATES BACK OF CURB.
- ALL SIGNS SHALL HAVE A 7" MIN. CLEARANCE FROM FINISH GRADE TO BOTTOM OF LOWEST SIGN MOUNTED ON POST.
- ALL STRIPING SHALL BE IN CONFORMANCE WITH LOCAL AGENCY REQUIREMENTS.
- ADJUST ALL MANHOLE RINGS AND CLEAN OUT COVERS TO BE FLUSH WITH FINISHED GRADE. ALL PARTS TO BE TRAFFIC BEARING (ASHTO H-20 LOADING).
- ENSURE ACCESSIBILITY STICKERS ARE PLACED ON ALL APPLICABLE DOORS.
- TRANSITIONS TO BE FLUSH ALL ALONG THE ACCESSIBLE ROUTE. CONTRACTOR SHALL ENSURE THE MAXIMUM CONSTRUCTED LEVEL TRANSITION AT EVERY JOINT DOES NOT EXCEED THE MAXIMUM ALLOWABLE UNDER THE ADA AFTER SETTLEMENT, EXPANSION, CONTRACTION, ETC. CHANGES IN LEVEL OF 1/4" HIGH MAXIMUM SHALL BE PERMITTED TO BE VERTICAL. CHANGES IN LEVEL BE TWEEN 1/4" HIGH MAXIMUM AND 1/2" HIGH MAXIMUM SHALL BE BEVELLED WITH A SLOPE NOT STEEPER THAN 1:2.
- FILL EXPANSION / CONTROL JOINT WITH EXTERIOR GRADE CONCRETE EXPANSION JOINT CALLING. FILL ENTIRE LENGTH OF JOINT SUCH THAT ANY CHANGE IN ELEVATION DOES NOT EXCEED 1/4" IN ELEVATION FROM THE ADJACENT CONCRETE SURFACES WHEN CALLINGS HAS CURED. FOR JOINTS WITH Voids DEEPER THAN 1/2", INSTALL CONTAINABLE FIBERBOARD EXPANSION JOINT FILLER BELOW CALLING TO SUPPORT CALLING ABOVE.

GENERAL SITE NOTES

- FOR LEGAL DESCRIPTION BOUNDARY INFO, AND BENCHMARK INFO. SEE SITE SURVEY SHEET.
- PRIOR TO ANY CONSTRUCTION, CONTRACTOR SHALL FIELD STAKE THE PROJECT GEOMETRY TO ENSURE PROPOSED DIMENSIONS FIT EXISTING CONDITIONS. CONTRACTOR SHALL NOTIFY ENGINEER IMMEDIATELY IF ANY DISCREPANCIES ARISE.
- CONTRACTOR IS RESPONSIBLE FOR PROTECTION OF ALL PROPERTY CORNERS.
- CONTRACTOR SHALL MATCH PROPOSED CONCRETE AND PAVEMENT TO EXISTING IN GRADE AND ADJACENT.
- CONTRACTOR IS RESPONSIBLE FOR REPAIRING THE DAMAGE DONE TO ANY EXISTING ITEM DURING CONSTRUCTION SUCH AS BUT NOT LIMITED TO, BUILDING UTILITIES PAVEMENT STRIPING, CURB, ETC. REPAIRS SHALL BE EQUAL TO OR BETTER THAN EXISTING CONDITIONS.
- ALL WORK AND MATERIALS SHALL COMPLY WITH ALL CITY OF MIAMI AND ALL OTHER APPLICABLE AGENCY REGULATIONS AND CODES AND D.S.A. STANDARDS.
- ALL DISTURBED AREAS ARE TO RECEIVE FOUR INCHES OF TOPSOIL, SEED, MULCH AND WATER UNTIL A HEALTHY STAND OF GRASS IS ESTABLISHED.
- ALL FOOT REFERENCES APPLY TO THE 2017 STANDARDS.
- PROJECT SHALL MEET THE REQUIREMENTS OF THE CITY'S FLOOD PLANNING MANAGEMENT ORDINANCE.

DELIVERY RESTRICTION:
 DELIVERY IS RESTRICTED FROM 10 PM TO 6 AM AND DELIVERY ACCESS IS ONLY PERMITTED FROM GRAND AVENUE.

Designed by: J.K.M.B.	Checked by: J.C.H.	Approved by: R.S.P.	Scale: 1"=20'	Date: 10-30-18	Job No.: W63135-1	By: [Signature]
Drawn by: J.C.H.	Checked by: T.H.H.	Approved by: T.H.H.	Scale: 1"=20'	Date: 10-30-18	Job No.: W63135-1	By: [Signature]

Plan Prepared By: CPH, Inc.
 1982 SW 111 St.
 Miami, FL 33136
 Ph: 305.374.4806
 License: Eng. C.O.A. No. 3216
 Survey L.B. No. 7148
 Arch. Lic. No. A4260928
 Landsc. Lic. No. LC600228

SITE DIMENSION PLAN
WAWA GABLES POINTE - PHASE 2
US1 & GRAND AVENUE
CITY OF CORAL GABLES, FLORIDA

Sheet No. **C.3**

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 KYLE M. BECHTELMEIER, P.E.
 FL Lic. No. 86673

By	Date	Revision
	1/24/20	BOX FINAL

J:\W63135-1\W63135-1_C.3_Abbottdwg.dwg Jan 24, 2020 - 9:55am jchavez



CFN 2006R0019467
DR Bk 24122 Pgs 2284 - 2290; (7pgs)
RECORDED 01/06/2006 14:43:22
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

This Instrument Was Prepared By And
Record and Return To:

DECLARATION OF RESTRICTIVE COVENANTS

KNOW ALL MEN BY THESE PRESENTS, that Miami-Dade County, a political subdivision of the State of Florida (hereinafter jointly referred to as the "Owner") hereby makes, declares, and imposes on the land herein described, the covenants running with the title to the land (hereinafter referred to as the "Declaration"), which shall be binding on the Owners, their heirs, successors, and assigns, personal representatives, mortgagees, lessees, and against all persons claiming by, through or under them;

WHEREAS, Owner holds the fee simple title to the land in the City of Coral Gables, Florida, commonly known as 231 Grand Avenue, 330 South Dixie Highway, 238 Florida Avenue, 226 Florida Avenue, 222 Florida Avenue and 218 Florida Avenue, Coral Gables, Florida, and legally described and attached hereto as Exhibit "A" (hereinafter referred to as the "Property"); and

WHEREAS, the City Commission of the City of Coral Gables pursuant to Ordinances No. 2005-03 and 2005-04, passed and adopted January 25, 2005, a change of zoning designation, change of land use designation, several variances, and site plan review, which allows for a proposed commercial project consisting of restaurant and retail uses and a community center on the Property to have a minimum front setback of zero (0' 0") feet from Grand Avenue vs. providing a minimum front setback of twenty (20' 0") feet as required by Section 4-66(e)(1) of the Coral Gables Zoning Code (hereinafter referred to as the "Code"), and allows for a minimum landscaping strip of three (3'-0") feet to five (5'-0") feet along Grand Avenue vs. providing a minimum landscape strip along Grand Avenue of five (5'-0") feet as required by Section 3-6(u)(1) of the Code, and also allows for the commercial buildings to provide a total of seventy-one (71) parking spaces vs. providing a minimum of eighty seven (87) parking spaces as required by Section 13-6(a) Table 2 of the Code (hereinafter collectively referred to as the "Variances"), as required in Section 4-50(d)(1) of the Coral Gables Zoning Code (hereinafter referred to as the "Code") and has authorized the issuance of a permit to construct a commercial project at 231 Grand Avenue, 330 South Dixie Highway, 238 Florida Avenue, 226 Florida Avenue, 222 Florida Avenue and 218 Florida Avenue, subject to the terms and conditions listed below.

10. Owner shall prepare and submit a vehicular directional signage plan for review and approval by the Public Works Director.

11. All costs associated with the installation of landscaping, irrigation, and other improvements contained herein and within the rights-of-way, etc., shall be the responsibility of the Owner, successors or assigns. Maintenance of the improvements listed herein shall be the responsibility of Owner.

12. Owner shall maintain all landscaping as detailed on the Site Plan, and replace all dead or non-complying plant materials in accordance with the plant materials identified.

13. All landscaped areas shall be irrigated, by Owner, to provide 100% coverage of such areas.

14. Owner shall prepare and submit an infrastructure improvement plan for the coordination and construction of water, sewer, gas, electrical and other infrastructure facilities subject to the Director of the Public Works Department review and approval.

15. Owner shall submit a construction parking and traffic management plan for the Building and Zoning Department review and approval.

16. In the event the terms of this Declaration are not being complied with, in addition to any other remedies available, the City is hereby authorized to withhold any further permits, and refuse to make any inspection or grant any approvals, until such time as there is compliance with this Declaration.

17. This Declaration on the part of the Owner shall constitute a covenant running with the land and shall be recorded at the Owner's expense, in the public records of Miami-Dade County, Florida, and shall remain in full force and effect and be binding upon the undersigned Owner, and their heirs, successors and assigns until such time as the same is modified or released. These restrictions during their lifetime shall be for the benefit of, and limitation upon, all present and future owners of the real property and for the public welfare.

18. This Declaration is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years from the date this Declaration is recorded after which time it shall be extended automatically for successive periods of ten (10) years, unless an instrument signed by the then owner(s) of the Property has been recorded agreeing to change the covenant in whole, or in part, provided that the Declaration has first been modified or released by the City of Coral Gables.

develop the Property in accordance with the Site Plan or elects to develop the Property in a manner that does not require the Variances or if the Variances expire by operation of law in accordance with the Code and is not extended or reinstated, this Declaration and the conditions contained in Resolutions No. 2005-03 and 2005-04 shall be null and void and shall have no effect upon the Property and the Director shall, upon written request by the Owner, forthwith execute and deliver to Owner a written instrument, in recordable form (hereinafter referred to as the "Release"), effectuating and acknowledging the release and cancellation of this Declaration. Failure of the Director to execute and deliver the Release to Owner shall not affect the invalidity and unenforceability of this Declaration.

IN WITNESS WHEREOF, the undersigned has/have caused its hand and seal to be affixed hereto on this ____ day of _____, 2005.

WITNESSES:

OWNER:

Miami-Dade County, a political subdivision of the State of Florida

Elizabeth Figueroa

Print Name: Elizabeth Figueroa

Glady Fernandez

Print Name: Glady Fernandez

BY:

George Burgess 10/14/05
George Burgess, County Manager

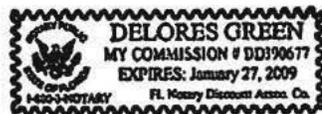
STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was sworn and subscribed to (or affirmed) before me by, who is personally known to me and who did take an oath.

WITNESS my hand and official seal this 14 day of October, 2005.

Delores Green
Print or Stamp Name: Delores Green
Notary Public, State of Florida at Large
Commission No.:
My Commission Expires:

Approved as to Form and Legal Sufficiency by City of Coral Gables,



"A"

LEGAL DESCRIPTION

LOTS 7 THROUGH 23 AND 25 THROUGH 27, BLOCK 1-B OF "COMBINED AND SUPPLEMENTAL MAP OF MACFARLANE HOMESTEAD PLAT AND ST. ALBAN'S PARK" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 5, AT PAGE 81 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

LESS:

THAT PORTION OF LOTS 14 THROUGH 21, BLOCK 1-B OF "COMBINED AND SUPPLEMENTAL MAP OF MACFARLANE HOMESTEAD PLAT AND ST. ALBAN'S PARK" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 5, AT PAGE 81 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA LYING NORTH OF THE SOUTHERLY RIGHT OF WAY LINE OF STATE ROAD 5 (US-1) ACCORDING TO MAP NO. 87030-2109 OF THE FLORIDA DEPARTMENT OF TRANSPORTATION OF MIAMI DADE COUNTY FLORIDA.

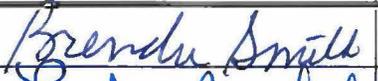
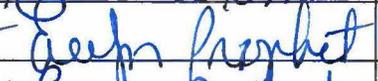
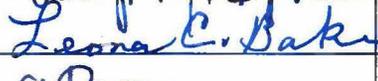
AND LESS:

THAT PORTION OF LOTS 7 THROUGH 13 , BLOCK 1-B OF "COMBINED AND SUPPLEMENTAL MAP OF MACFARLANE HOMESTEAD PLAT AND ST. ALBAN'S PARK" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 5, AT PAGE 81 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA LYING SOUTH OF THE NORTHERLY RIGHT OF WAY LINE OF GRAND AVENUE ACCORDING TO THE R.P.B. 101, PG. 58 OF MIAMI DADE COUNTY RIGHT OF WAY DIVISION, SHEET 2 OF 2.

PETITION

EXHIBIT "D"

We, the undersigned neighbors and residents of the MacFarlane and Golden Gate Districts and the Lola B Walker HOA, having reviewed the attached site plan and elevations proposed by WAWA presented to us at our Sept. 26 Homeowners' Meeting or individually by the HOA president, fully support this project. Specifically, we approve the gas pumps and any rezoning needed for 4 of the 6 gas pumps. We also desire and support WAWA's request for customer/patron access (both vehicular and pedestrian) from Florida Avenue until 10 pm, after which time the access will be closed until 6 am.

	Name	Signature	Address	City, State	Zip
1.	Brenda Smith		104 Frow Ave.	Coral Gables, FL	33133
2.	Evelyn Prophet		138 Oak Ave	Coral Gables, FL	33133
3.	Leona C. Baker		201 Wash. Drive	Coral Gables, FL	33133
4.	Evelyn Blanco		234 Wash. Drive	Coral Gables, FL	33133
5.	Steven Burgess		245 madison LN.	Coral Gables, FL	33133
6.	Carlos Arakhan		235 Jefferson dr	Coral Gables, FL	33133
7.				Coral Gables, FL	33133
8.				Coral Gables, FL	33133
9.				Coral Gables, FL	33133
10.				Coral Gables, FL	33133
11.				Coral Gables, FL	33133
12.				Coral Gables, FL	33133
13.				Coral Gables, FL	33133
14.				Coral Gables, FL	33133

PETITION

We, the undersigned neighbors and residents of the MacFarlane and Golden Gate Districts and the Lola B Walker HOA, having reviewed the attached site plan and elevations proposed by WAWA presented to us at our Sept. 26 Homeowners' Meeting or individually by the HOA president, fully support this project. Specifically, we approve the gas pumps and any rezoning needed for 4 of the 6 gas pumps. We also desire and support WAWA's request for customer/patron access (both vehicular and pedestrian) from Florida Avenue until 10 pm, after which time the access will be closed until 6 am.

	Name	Signature	Address	City, State	Zip
1.	Jacqueline Storey	Jacqueline Storey	218 Grant Drive	Coral Gables, FL	33133
2.	David T. Fuller	David T. Fuller	221 Grant Dr.	Coral Gables, FL	33133
3.	Daisy Fuller	Daisy L Fuller	221 Grant Drive	Coral Gables, FL	33133
4.	Geraldine Dupesne	Geraldine Dupesne	220 Grant Dr.	Coral Gables, FL	33133
5.	Linda Pike	Linda Pike	142 Florida Ave	Coral Gables, FL	33133
6.	Cheryl Smart	Cheryl Smart	210 Florida Ave	Coral Gables, FL	33133
7.	Xavier Mendez	Xavier Mendez	215 Jefferson Dr	Coral Gables, FL	33133
8.	Zasheen Smith	Zasheen Smith	116 Frow Ave	Coral Gables, FL	33133
9.	Yvette Fullwood	Yvette Fullwood	111 Florida Ave	Coral Gables, FL	33133
10.	Yvette Gachote	Yvette Gachote	119 Frow Ave	Coral Gables, FL	33133
11.				Coral Gables, FL	33133
12.				Coral Gables, FL	33133
13.				Coral Gables, FL	33133
14.				Coral Gables, FL	33133

No
No

No
Yes

PETITION

We, the undersigned neighbors and residents of the MacFarlane and Golden Gate Districts and the Lola B Walker HOA, having reviewed the attached site plan and elevations proposed by WAWA presented to us at our Sept. 26 Homeowners' Meeting or individually by the HOA president, fully support this project. Specifically, we approve the gas pumps and any rezoning needed for 4 of the 6 gas pumps. We also desire and support WAWA's request for customer/patron access (both vehicular and pedestrian) from Florida Avenue until 10 pm, after which time the access will be closed until 6 am.

	Name	Signature	Address	City, State	Zip
1.	Carl Leon Prime	Carl L Prime	209 Florida Avenue	Coral Gables, FL	33133
2.	Mildred Cooper	Mildred Cooper	133 Florida Ave	Coral Gables, FL	33133
3.	Wes Leigh	Wes Leigh	101 Florida Ave	Coral Gables, FL	33133
✓ 4.	GC WALKER	GC Walker	106 FLORIDA AVE	Coral Gables, FL	33133
5.	Betty	Betty Washington	118 ZIA Ave	Coral Gables, FL	33133
6.	Beverly Gibson	Beverly Gibson	134 Florida Ave.	Coral Gables, FL	33133
7.	Cynthia Shirley	Cynthia Shirley	138 FLORIDA AVE	Coral Gables, FL	33133
8.	Carlos Aguilera	Carlos Aguilera	221 Florida Ave. Coral Gables	Coral Gables, FL	33133
9.	FRANCINA BERRY	Francina Berry	217 FLORIDA Ave	Coral Gables, FL	33133
10.	Yulri Berry	Yulri Berry	217 Florida Ave	Coral Gables, FL	33133
11.	Alan C. Harris	Alan C. Harris	218 Florida Ave	Coral Gables, FL	33133
12.	Eduvina Prime	Eduvina Prime	141 Florida Ave	Coral Gables, FL	33133
13.	Linda Dixie	Linda Dixie	142 Florida Ave.	Coral Gables, FL	33133
14.				Coral Gables, FL	33133

PETITION

We, the undersigned neighbors and residents of the MacFarlane and Golden Gate Districts and the Lola B Walker HOA, having reviewed the attached site plan and elevations proposed by WAWA presented to us at our Sept. 26 Homeowners' Meeting or individually by the HOA president, fully support this project. Specifically, we approve the gas pumps and any rezoning needed for 4 of the 6 gas pumps. We also desire and support WAWA's request for customer/patron access (both vehicular and pedestrian) from Florida Avenue until 10 pm, after which time the access will be closed until 6 am.

	Name	Signature	Address	City, State	Zip
1.	Judith Davis	Judith Davis	236 Washington Drive	Coral Gables, FL	33133
2.	Michael Johnson	M. Johnson	228 Washington Drive	Coral Gables, FL	33133
3.	Nia Wallace	Nia Wallace	228 Washington Dr.	Coral Gables, FL	33133
4.	EBAMA Russell	EBAMA Russell	224 WASHINGTON Dr.	Coral Gables, FL	33133
5.	Jacqueline Dixon	Jacqueline Dixon	220 Washington Dr.	Coral Gables, FL	33133
6.	KENNETH DIXON	Kenneth Dixon	220 Wash. Dr.	Coral Gables, FL	33133
7.	Leslie H. Cooper	Leslie H. Cooper	216 Washington Drive	Coral Gables, FL	33133
8.	TAMESHA Abner	TAMESHA Abner	211 Washington Drive	Coral Gables, FL	33133
9.	Tina Brathwaite	Tina Brathwaite	211 Washington Drive	Coral Gables, FL	33133
10.	LIONEL Gray	L. Gray	211 Washington Drive	Coral Gables, FL	33133
11.	MARK Blake	MARK Blake	211 Washington Drive	Coral Gables, FL	33133
12.	ANTHONY JOHNSON	Anthony Johnson	218 WASHINGTON DR	Coral Gables, FL	33133
13.	ANDREW TILLMAN	Andrew Tillman	237 WASHINGTON DR.	Coral Gables, FL	33133
14.	CATHERINE Tillman	CATHERINE Tillman		Coral Gables, FL	33133

PETITION

We, the undersigned neighbors and residents of the MacFarlane and Golden Gate Districts and the Lola B Walker HOA, having reviewed the attached site plan and elevations proposed by WAWA presented to us at our Sept. 26 Homeowners' Meeting or individually by the HOA president, fully support this project. Specifically, we approve the gas pumps and any rezoning needed for 4 of the 6 gas pumps. We also desire and support WAWA's request for customer/patron access (both vehicular and pedestrian) from Florida Avenue until 10 pm, after which time the access will be closed until 6 am.

	Name	Signature	Address	City, State	Zip
15.	Aliyah McLean	<i>Aliyah</i>	251 Madison Lane	Coral Gables, FL	33133
16.	Harriet Rolle	<i>H. Rolle</i>	251 Madison Lane	Coral Gables, FL	33133
17.	Angela Rolle	<i>Angela Rolle</i>	251 Madison Lane	Coral Gables, FL	33133
18.	Samika Gibson	<i>Samika Gibson</i>	250 Madison Lane	Coral Gables, FL	33133
19.	THEODORE GIBSON	<i>T. Gibson</i>	250 MADISON LANE	Coral Gables, FL	33133
20.				Coral Gables, FL	33133
21.				Coral Gables, FL	33133
22.				Coral Gables, FL	33133
23.				Coral Gables, FL	33133
24.				Coral Gables, FL	33133
25.				Coral Gables, FL	33133
26.				Coral Gables, FL	33133
27.				Coral Gables, FL	33133
28.				Coral Gables, FL	33133

From: [Ramos, Miriam](#)
To: [Paulk, Enga](#)
Cc: [Suarez, Cristina](#)
Subject: Bahamian Village Site Plan Opinion
Date: Tuesday, January 28, 2020 1:20:08 PM
Attachments: [opinion - Bahamian village site plan.docx](#)
[image005.png](#)
Importance: High

Enga, please format this opinion for issuance as soon as possible. It should be issued to Suramy Cabrera as Development Services Director. Once finalized, please find me so that I can initial it. We need to have a final printed version and the opinion on line by the end of the day today.

Thank you,

Miriam Soler Ramos, Esq., B.C.S.

City Attorney

*Board Certified by the Florida Bar in
City, County, and Local Government Law
City of Coral Gables*

405 Biltmore Way, 2nd Floor
Coral Gables, FL 33134
(305) 460-5084 direct dial



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CITY OF CORAL GABLES
CITY ATTORNEY'S OFFICE

OPINION REGARDING SITE PLAN FOR BAHAMIAN VILLAGE SITE

The following opinion addresses the administrative approval of a site plan that modifies a previously-approved project located on the undeveloped portion of the site owned by Bahamian Village LLC (“Bahamian Village”) where the LBW Homeowner’s Foundation of Coral Gables Community Center is currently located. Full administrative review of the proposed project will be conducted once a building permit application submitted and construction drawings are submitted.

Background

In September 2014, the City Commission approved a Planned Area Development (PAD) and site plan (attached hereto as Exhibit A) for a project referred to as “Gables Pointe Plaza” (the “Project”)¹ (see Ordinance No. 2014-21) and the approval set forth conditions as well as allowances. The Project consisted of two phases: (1) a community center facility and office space located on the east side of the Property (“Phase One”), and (2) a proposed restaurant located on the west side of the Property adjacent to US-1 (“Phase Two”).

Due to significant delays in the redevelopment of the Property, litigation ensued. In December 2015, the City Commission adopted Resolution No. 2015-303 which acknowledged the importance of the geographic area of the City known as the MacFarlane Homestead Historic District, in which the Project was to be developed, the delays relating to development of the Project, and the litigation which existed at the time between Miami-Dade County (the “County”) and the LBW Homeowners Foundation of Coral Gables, Inc. (the “Foundation”) regarding the building of the community center; urged the County to reach a settlement that would allow for the completion of the Project; and authorized the City Manager and City Attorney to take all necessary action to facilitate resolution of the dispute between the County and the Foundation, including invocation of dispute resolution processes and expediting any further reviews of the Project.

In April 2017, the former City Attorney was asked whether Resolution No. 2015-303 allowed modifications to the site plan for the Project to be approved administratively. In response, he authored COA 2017-011 stating that the City Manager and City Attorney are granted all administrative and legal authority to resolve the matter, which includes administrative approval of modifications to the site plan.

On November 16, 2017, the City, which had intervened in *Bahamian Village LLC, et al. v. Miami-Dade County*, 2015-015755-CA-01, entered into a settlement agreement with Plaintiffs Bahamian Village LLC and Debra Kolsky as Trustee, relating to the development of the Project

¹The proposed project was to be located on the real property described as: Lots 7 through 27, Block 1B of MACFARLANE HOMESTEAD AND ST. ALBAN’S PARK SECTION (280 SOUTH DIXIE HIGHWAY) (the “Property”) less what is commonly known as the Grand Avenue Right of Way.

(the “Settlement Agreement”). In the Settlement Agreement, the City agreed to, among other things:

- Waive all building permit fees (which include fees charged to contractors, subcontractors, and sub-subcontractors) including any and all impact fees and Art in Public Places fees for the remaining phases;
- Expedite the review and approval process for any site plan modifications and require only one submission to the Board of Architects and no further public hearings (including hearing before the Planning and Zoning Board);
- Complete any and all approvals of proposed site plan modifications administratively by the City Manager (or designee) and City Attorney, as stated in Resolution 2015-303;
- Approve a drive-through for Phase 2, provided that Bahamian Village agree to comply with the City standards for Conditional Use for drive-through operations without the obligation of a conditional use application and hearing process;
- Reassign the address identified as 220 Florida Avenue to 218 Grand Avenue, once Bahamian Village installs vehicle access on Grand Avenue as part of Phase 2.

I. Proposed Modification of the Site Plan

In July 2017, Phase 1 of the Project was completed, however, Phase 2 remains undeveloped. Representatives of Bahamian Village have met with the City Attorney and City Manager and presented a new project that requires significant modification of the site plan for Phase 2 of the Project. The prior approval of the site plan for a restaurant, with a substantial outdoor dining area, allowed for the restaurant to operate Sunday through Thursday from 9 a.m. until 1 a.m. the following day and Friday and Saturday from 9 a.m. until 2 a.m. the following day.

The new project consists of a food market/convenience store/gas station called Wawa. Wawa, Inc. is a privately held company that opened its first store in 1964 and today owns 750 convenience retail stores. Wawa distinguishes itself from most convenience stores in that it offers a large fresh food selection which includes built-to-order hoagies, fresh coffee, hot breakfast sandwiches, bakery items, soups, sides, wraps, salads, and snacks. In addition, Wawa prides itself in providing fresh fruit and vegetables also commonly not available at traditional convenience stores.

The site plan (attached hereto as Exhibit B), places the Wawa building along US-1 wholly in the part of the Phase 2 parcel that is zoned Commercial (C) and includes an outdoor seating area. The parking lot and six (6) gasoline pumps are placed behind the Wawa building, between the Wawa building and the already-completed Phase 1 Community Center. In addition, the project may provide Tesla charging stations on site. Two (2) out of the six (6) gasoline pumps are to be located in the portion of the parcel that is zoned Commercial Limited (CL). Ingress and egress are provided along Grand Avenue and Florida Avenue and the entrance/exit along Florida Avenue is positioned away from the single-family homes that face the Project and will be closed, with a metal gate, to vehicular traffic from 10 p.m. to 6 a.m. every day of the week. Wawa agrees that no

deliveries will be made after 10 p.m. and that all gasoline deliveries will be made off of Grand Avenue (which is not across from a residential district).

Section 4-301(D)(6)(b) of the Zoning Code does not allow customer access for nighttime uses which are visible from land designated as a residential district from 8:00 p.m. to 6:00 a.m. In addition, Section 4-301(E)(3) of the Zoning Code provides that no deliveries are permitted between 8:00 p.m. and 6:00 a.m. As previously stated, the underlying PAD approval allowed for restaurant operations, a more intense use, far exceeding 10 p.m.

Wawa operates 24-hours; however, the use is far less intense in the overnight hours than the restaurant approved in the underlying PAD ordinance which included an outdoor dining area where patrons could gather until at least 1 a.m. while consuming alcoholic beverages.

The site plan also provides a 4-foot wall together with 6-foot tall landscape buffer (at the time of planting) to shield the surrounding neighborhood from the commercial activity which exceeds the requirements of Section 4-301(E)(1) of the Zoning Code and the underlying PAD Ordinance. In addition, it provides for trees with a height of at least 14 feet at intervals of not less than 10 feet, surrounding the property although not required by Section 4-301(E)(5) of the Zoning Code because there is no common property line shared. While Section 4-301(J)(8) of the Zoning Code requires conditional use approval for nighttime uses within 150 feet of a residential parcel, the nighttime use for this Project was already approved by the City Commission in the underlying PAD approval ordinance.

II. Approval of the New Site Plan

In accordance with Resolution No. 2015-303 and the Settlement Agreement, the new site plan is to be approved by the City Manager and the City Attorney through their authority delegated by the City Commission and Sections 2-701 and 2-702 of the City's Zoning Code. While a portion of the Property is zoned CL, the Settlement Agreement provides specifically that Phase 2 of the Project requires commercial development, both parcels allow for such, and the Project in the proposed site plan is a reasonable use of the area. In addition, development of the site is and has been a predominant interest.

The proposed project may reasonably fall under two categories of the Zoning Code: (1) automobile service station and (2) convenience retail. Section 4-301(I) lists the uses that are permitted in the Commercial Limited District. Specifically, Section 4-301(I)(19) of the Zoning Code provides:

Building sites unified by a recorded Unity of Title filed prior to the enactment of this Zoning Ordinance and which, as a result of the enactment of this Zoning Ordinance, are zoned Commercial (C), in part, and Commercial Limited (CL), in part, are permitted to have Commercial (C) uses on the portions of the property designated Commercial Limited (CL), except for the following:

- a. Medical clinics in excess of ten-thousand-five-hundred (10,500) square feet of floor area.
- b. Drive through facilities.

- c. Sale of alcohol other than as an accessory use.
- d. Nightclubs.

The Zoning Ordinance adopted in 2007 changed the zoning from CB (formerly Commercial) to CL for the affected parcel. On January 6, 2006, a Declaration of Restrictive Covenants (attached hereto as Exhibit C) was recorded which tied 231 Grand Avenue, 330 South Dixie Highway, 238 Florida Avenue, 226 Florida Avenue, 222 Florida Avenue, and 218 Florida Avenue together. Those addresses make up what is referred to as the Project. *Accordingly, Section 4-301(I)(19.) is implicated and expressly permits a Commercial use on a site that is partially zoned C and partially zoned CL.*

“Automobile service station” is defined as:

any building, structure, or lot used for the following: dispensing or offering for retail sale gasoline, kerosene, lubricating oil, or grease for the operation and maintenance of vehicles. This may include buildings or structures that are used for the retail sale and direct delivery to motor vehicles of cigarettes, candy, soft drinks and other related items for the convenience of the motoring public, and may include facilities for lubricating, minor repairs or vehicle service. Such establishments shall not include facilities for major vehicle repair.

Zoning Code, Article 8.

While the proposed project could fall under the “Automobile service station” category, which are permitted outright in areas zoned C (and as a conditional use in areas zoned CL for reconstruction), given that Wawa engages in the retail sale of gasoline, it may also equally fall under the category of “convenience retail,” Article 8, Zoning Code, which is permitted as “retail” in areas zoned CL.

“Convenience retail” is defined as: “any retail establishment offering for sale **grocery** and household items, newspapers and magazines, **gasoline** and other auto products, **food products, incidental sales of cooked food or site-prepared food** ready for serving off premises, and similar item.” Article 8, Zoning Code. (emphasis added) The proposed Project fits well into this category. As stated above, the main commercial building is located wholly within the portion of the parcel that is zoned C and it includes the most intense use. A portion of the area used for gasoline pumps and parking – the lesser intense use - is the only part of the Project located in the CL portion of the parcel. Pursuant to Section 4-301(I)(14) of the Zoning Code, retail is permitted in CL. While ideally, the store building would be on the CL portion of the parcel with the gasoline pumps and parking on the C portion, that configuration is not possible as there is a linear park (the Park) that runs parallel to the parcel between US-1/South Dixie Highway and the parcel. The existence of the Park makes ingress and egress impossible, yielding the operation of the gasoline pumps inefficient and ineffective.

The new proposed site plan shows a detached roof over the gasoline pumps. A preliminary zoning review flagged this roof as a potentially non-compliant detached canopy. However, the detached roof is consistent with Section 5-201(F) of the Zoning Code providing that “the roof of an automobile service station and auxiliary buildings shall be of tile, pitched and shall extend from

the station over the gasoline pumps.” Alternatively, Sec. 5-302 of the Zoning Code, titled “Standards for awnings and canopies in residential and non-residential zoned districts, provides:

B. Commercial Limited (CL and C), Industrial, and University Campus District (UCD) zoning districts.

3. Free-standing canopies. No permanent self-supporting or freestanding shelter canopy, carport canopy or entrance canopy shall be permitted.

Shelter canopy, “means a roof-like covering, intended and used for the purpose of sheltering from the rays of the sun and from rain and weather **exclusive of vehicles**, either persons or inanimate objects. Shelter canopies are partially or entirely supported from the ground up.” (emphasis added) (Article 8, Zoning Code) Carport canopy, “means a structure that consists of a roof supported on posts or columns that provides shelter for one (1) or more motor vehicles.” Merriam-Webster dictionary defines “carport” as “an open-sided automobile shelter by the side of a building.” Finally, entrance canopy is defined in the Zoning Code as “canopy entrance” and “means a canopy intended and used for the purpose of sheltering persons or inanimate objects from the rays of the sun and from rain and weather,” and is logically intended to refer to canopies that are at the *entrance* of a building. The detached roof that is shown in the new proposed site plan does not fit any of the three definitions included above.

The new proposed site plan provides for an outdoor seating area off Grand Avenue, not explicitly intended for dining. Sec. A-66 of the Zoning Code requires a minimum setback of 20 feet from Grand Avenue for outdoor dining area/trellis, picnic table area and all paved areas other than walkways and driveways. However, in the underlying PAD approval, allowed for the proposed restaurant with a setback of 3 feet, 9 inches from Grand Avenue. The new proposed site plan reduces the encroachment into the setback by 3 feet. Accordingly, the new proposed site plan does not use the entire allowance provided for in the underlying PAD ordinance.

In addition, the site plan complies with the requirements of Section 4-301 of the Zoning Code and is consistent with the City’s Comprehensive Plan.

While, pursuant to Section 5-702(A), alcoholic beverage sales (package) are not permitted upon premises closer than 500 feet from any religious institution or school without approval of the Board of Adjustment, Article 8 of the Zoning Code defines “alcoholic beverage sales” as consisting of 25 percent or more of the floor area occupied by the display of alcoholic beverages. Wawa has provided assurance that the percentage of the floor area occupied by alcoholic beverages at this site will not exceed 5 percent and that it will only sell beer and wine. In addition, no alcohol consumption will be allowed on the premises.

The underlying PAD ordinance also required an air-conditioned trash room, consistent with Section 5-1701 of the Zoning Code which states, “new commercial construction or renovation of an existing commercial structure, the use of which involves food products (such as restaurants, cafeterias, etc.), where the cumulative cost of such renovation is in excess of twenty-five (25%) percent of the assessed value of the existing commercial structure shall make provisions for the installation of an air conditioning system for commercial trash containers.” Wawa will be providing an air-conditioned trash room.

In accordance with Sec. 1.9 of the Settlement Agreement, the City approved the placement of a lighted monument sign consistent with the Zoning Code (Section 5-1905) within the Park Easement and the City agreed to maintain the Park. In accordance with said provision of the Settlement Agreement, Bahamian Village will place the lighted monument sign for the Community Center in the Park to be maintained by it. The proposed sign for Wawa, as approved by the BOA, complies with the Zoning Code and applicable state statutes.²

The underlying PAD approval requires the completion of certain traffic circulation improvements prior to the issuance of the final Certificate of Occupancy. Wawa must comply with those requirements unless an alternate plan is approved by Miami-Dade County.

Also, the restrictive covenants that currently exist on the property should be amended to add the following conditions which are either required by the Zoning Code, proffered by Wawa, or the City Manager feels are reasonably necessary to protect the City and surrounding neighborhood:

- 4-foot tall Masonry wall along the North and East sides of the property (with the exception of the area in front of the Community Center) to protect the residential neighborhood;
- 6-foot tall hedge at time of planting, as required by Sec. 4-301(E)(1) of the Zoning Code setting forth performance standards for nighttime uses;
- Trees with a height of at least 14 feet, at intervals of not less than 10 feet, around the property as required by Sec. 4-301(E)(5) as proffered by Wawa; and
- Any illuminated signage is restricted to US-1 and the sign just above the front door, so as not to affect the residential properties along Florida Avenue and as consistent with Sec. 4-301(E)(6) of the Zoning Code.
- Deliveries are not permitted between 10 p.m. and 6 a.m. consistent with the underlying PAD approval.
- Reserve within the parking lot the provided off-street parking spaces for each of the buildings and place bollards at each parking space abutting the community center.
- Provide a pedestrian and vehicular circulation showing the proposed circulation system of surrounding streets and driveway access to the property, vehicular circulation within the property, and pedestrian and transit systems as required by Zoning Code Section 3-505(D)(3)(b) excluding a sidewalk on Florida Avenue due to the size of the landscape buffer.
- Proposed landscaping plan shall require review and approval by the Directors of Public Service and Planning and Zoning for substantial compliance with the Zoning Code.

It is important to note that the adjacent property owners are very much in favor of the Project and have provided evidence of their support in writing (attached hereto as Exhibit D). In addition, Bahamian Village has agreed to provide mailed notice enclosing this opinion to all property owners within a radius of 1,000 feet of the Project.

² The City's position with regard to Sec. 553.79(20)(a), F.S. is set forth in CAO 2017-055.

In consultation with the City Manager and staff, this opinion is issued pursuant to the Settlement Agreement, Sec. 2-252(e)(1) and (8) of the City Code, and Sec. 2-702 of the City's Zoning Code and is based on a specific set of facts only present on the parcel of land discussed and relating to the proposed Project and is not intended to be applied generally or to other parcels or projects. This opinion modifies the PAD approved in Ordinance No. 2014-21 and the corresponding site plan. Unless otherwise modified by this opinion, all relevant conditions of the PAD approval remain unchanged and in full force and effect and the Project must also comply with applicable provisions of the Florida Building Code, the City Code, and the Zoning Code (unless otherwise addressed in this opinion).

January 2020