

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Mark A. Kutney, AICP, Development Services Director/ (797-1101)
Prepared by: Marcie Oppenheimer Nolan, Planning Supervisor

SUBJECT: V 10-3-02 Pine Island Corp., 8501 Orange Drive/Generally located at the northeast corner of the intersection of Pine Island Road and Orange Drive.

AFFECTED DISTRICT: District 3

REPORT IN BRIEF: A site plan has been submitted indicating the proposed future development of the entire Pine Island site, to include a service station with accessory fuel pumps, 100 townhomes, and a wetland mitigation area. The site plan, as submitted, requires the approval of five (5) variances. The variance request is divided into two variance groups. The first set of variance requests are based upon the residential development. The second set of variance requests are due to the proposed service station at the corner of Pine Island Road and Orange Drive.

Residential Use

1. **FROM:** Section 12-33(O) of the Land Development Code which requires a maximum 6 foot high wall when residential uses are adjacent to residential uses **TO:** increase the height of the wall to 8 feet;
2. **FROM:** Section 12-82(H)(J) of the Land Development Code which requires a 40 foot peripheral setback **TO:** reduce the required setback to 30 feet along the north property line;

Adjacent to the north property line, the developer has proposed building an 8 foot high wall, at the request of the adjacent residences, the code requires 6 foot high maximum wall (Section 12-33(O)). In addition, the code requires a forty foot perimeter setback in the planned RM-10 zoning district (Section 12-82(H)(J)). Due to the width of the townhouse units and the site configuration, the applicant has submitted a plan providing a 30 foot rear setback.

Service Station and Motor Fuel Pump Islands

3. **FROM:** Section 12-34(Y)(2) of the Land Development Code which requires a 250 foot distance separation between the property line of a service station and another service station and also between residential uses; **TO:** reduce the distance separation between service stations to 110 feet, and between residential uses to zero (0) feet;
4. **FROM:** Section 12-34(Y)(4) of the Land Development Code which requires a minimum of 20 feet between an access drive related to fuel pumps and private property **TO:** reduce the required distance to 8 feet;
5. **FROM:** Section 12-83 of the Land Development Code which requires 200 foot minimum lot frontage in the B-2 zoning district **TO:** reduce the required lot frontage to 165 feet.

The original platted parcel for the service station, Parcel B, met the minimum lot requirements for the B-2 zoning district, a minimum of 200 feet on roadway frontage (Section 12-83). The new parcel configuration, based upon the townhouse design reduces the lot frontage on the east to 165 feet.

The variance request for the distance separation of the access drive to the nearest residential property line (Section 12-34(Y)(4) is due to the location of the access point, as approved on the plat.

The final variance request, for the minimum distance for service stations from another service station and between a service station and residential use is a result of the developer changing the use of the parent parcel to residential and due to the existence of a service station at the northeast corner of Pine Island Road and Orange Drive

PREVIOUS ACTIONS: None

CONCURRENCES: The Planning and Zoning Board met on February 12, 2003 and made the following motions:

1) Section 12-33(O), to increase the height of the wall to 8 feet:

Mr. Waitkus made a motion, seconded by Ms. Lee, to approve. **(Motion carried 4-0)**

2) Section 12-82(H)(J), to reduce the required setback to 30 feet along the north property line:

Ms. Lee made a motion, seconded by Mr. Waitkus, to approve. **(Motion carried 4-0)**

3) Section 12-34(Y)(2), to reduce the distance separation between service stations to 110 feet, and between residential uses to zero (0) feet:

Ms. Lee made a motion, seconded by Ms. Turin, to deny. **(Motion carried 4-0)**

4) Section 12-34(Y)(4), to reduce the required distance to eight (8) feet:

Ms. Lee made a motion, seconded by Mr. Waitkus, to deny. **(Motion carried 4-0)**

5) Section 12-83, to reduce the required lot frontage to 165 feet:

Ms. Lee made a motion, seconded by Ms. Turin, to deny. **(Motion carried 3-1 with Mr. Waitkus being opposed)**

FISCAL IMPACT: None

RECOMMENDATION(S): Staff finds the subject application complete and suitable for transmittal to Town Council for further consideration.

Attachment(s): Planning Report, Justification Letter Land Use Map, and Zoning and Aerial Map

TOWN OF DAVIE
Development Services Department
Planning and Zoning Division Staff
Report and Recommendation

Applicant Information

Owner

Name: B.G. Pine Island Corp/77 Acre Trust
Address: 1000 S. Federal Highway
City: Boynton Beach, FL 33435
Phone: (561) 522-3636

Agent:

Name: Calvin Giordano & Associates, Inc.
Address: 1800 Eller Drive, Suite 600
City: Ft. Lauderdale, FL 33316
Phone: (954) 921-7781

Background Information

Date of Notification: February 5, 2003

Number of Notifications: 98

Application History: No deferrals have been requested.

Application Request: A site plan (SP 10-5-02) has been submitted requesting approval of a service station including motor fuel pump islands and 100 townhomes. The site plan, as submitted and designed requires the approval of five (5) variances prior to review by Site Plan Committee and Town Council.

This variance request is divided into two variance groups. The first set of variance requests are based upon the residential development. The second set of variance requests are due to the proposed service station at the corner of Pine Island Road and Orange Drive.

Residential Use

6. **FROM:** Section 12-33(O) of the Land Development Code which requires a maximum 6 foot high wall when residential uses are adjacent to residential uses **TO:** increase the height of the wall to 8 feet;
7. **FROM:** Section 12-82(H)(J) of the Land Development Code which requires a 40 foot peripheral setback **TO:** reduce the required setback to 30 feet along the north property line; and

Service Station and Motor Fuel Pump Islands

8. **FROM:** Section 12-34(Y)(2) of the Land Development Code which requires a 250 foot distance separation between the property line of a service station and another

service station and also between residential uses; **TO:** reduce the distance separation between service stations to 110 feet, and between residential uses to zero (0) feet;

9. **FROM:** Section 12-34(Y)(4) of the Land Development Code which requires a minimum of 20 feet between an access drive related to fuel pumps and private property **TO:** reduce the required distance to 8 feet;

10. **FROM:** Section 12-83 of the Land Development Code which requires 200 foot minimum lot frontage in the B-2 zoning district **TO:** reduce the required lot frontage to 165 feet.

Address/Location: 8501 Orange Drive/Generally located at the northwest corner of the intersection of Pine Island Road and Orange Drive.

Future Land Use Plan Designation: Commercial

Proposed Land Use Plan Designation: Residential 10 DU/Acre and Commercial

Zoning:B-2, Neighborhood Business District

Proposed Zoning: RM-10, Medium Density Dwelling and RS, Recreation and Open Space and B-2, Neighborhood Business District.

Existing Use: Vacant

Proposed Use: Townhouse Development, Service Station and Wetland Mitigation area.

Parcel Size: 14.97 net acres (9.99 acres for townhouses, 3.54 acres for wetland/conservation area and 1.43 acres for the gas station)

<u>Surrounding Uses:</u>	<u>Surrounding Land Use Plan Designation:</u>
North: Townhomes, Alpine Woods	Residential
South: Orange Drive and C-11 Canal	Recreation and Open Space
East: Pine Island Road, then Hess Service Station	Commercial
West: Vacant Land (Parkside Estates)	Residential 1 DU/Acre

Surrounding Zoning:

North:	RM-10, Medium Density Dwelling District
South:	Orange Drive and C-11 Canal (officially not designated)
East:	B-3, Planned Business Center District
West:	AG, Agricultural District

History

Previous Requests on Same Property: Town Council approved the Pine Island Commercial Plat (Plat Book 167, Page 50) on March 3, 1998 by Resolution 98-78.

Resolution R 99-243 was approved on July 21, 1999 related to the installation of required improvements associated with the Pine Island Commercial Plat.

Two (2) site plans, both requesting approval of a shopping center, have been submitted to the Town for the subject site (SP 10-7-98 and SP 1-2-00). These applications were subsequently withdrawn by the applicant due to opposition from the adjacent residents to the proposed location of a shopping center along the rear property line.

A Land Use Plan Amendment to change the land use on the 9.99 acre parcel from Commercial to Residential 10 DU/acre was approved by the Local Planning Agency on January 22, 2003. The Town Council voted to approve on first reading the proposed Amendment on February 5, 2003, motion carried 5-0.

A rezoning application has been submitted (ZB 9-1-02) requesting to rezone a portion of the site to RM-10, Medium Density Residential 10 DU/acre and RS, Recreation and Open Space. This request is scheduled for the March 5, 2003 Town Council meeting and the same Planning and Zoning Board meeting as this variance request.

Application Details

The subject site is located at the corner of Pine Island Road and Orange Drive. This location is adjacent to mostly residential uses to the north. Due to this fact, the applicant has initiated the process to change the land use on the majority of the parcel to Residential 10 DU/acre to be compatible with the surrounding residential developments. The applicant proposes leaving the corner parcel as commercial and has proposed to build a service station at this location. In addition, there is wetland mitigation site, identified and permitted on the westernmost portion of the parcel (Parcel C). The location of this area has been predetermined by Broward County, and a conservation easement is in place on this parcel.

A site plan has been applied for indicating the proposed future development of the entire site. Parcel A (9.99 acres) is proposed for 100 townhomes designed as a traditional neighborhood development. Parcel B is proposed for a service station with two additional tenant bays. This proposed development, of 100 townhomes, with a community pool and cabaña along with a proposed service station has triggered the need for the requested variances.

Applicable Codes and Ordinances

Section 12-309 Review for Variances

Section 12-33(O) of the Land Development Code which requires a maximum 6 foot high wall when residential uses are adjacent to residential uses; **Section 12-34(Y)(2)** of the Land Development Code which requires a 250 foot distance separation between service stations and between residential uses; **Section 12-34(Y)(4)** of the Land Development Code which requires a minimum of 20 feet between an access drive related to fuel pumps and private property; **Section 12-82(H)(J)** of the Land Development Code which requires a 40 foot peripheral setback; and **Section 12-83** of the Land Development Code which requires 200 foot minimum lot frontage in the B-2 zoning district.

Comprehensive Plan Considerations

Planning Area: The subject property falls within Planning Area 2. Planning Area 2 includes the westernmost section of the Town north of Orange Drive and south of SW 14 Street, and bound on the west by Interstate 75 and on the east by SW 100 Avenue. The predominant existing and planned land use is single family residential at a density of one dwelling per acre.

Broward County Land Use Plan: The subject site falls within Flexibility Zone 99. The Broward County Land Use Plan has identified this parcel of land as Commercial.

Applicable Goals, Objectives & Policies: *Future Land Use Plan, Objective 17: Land Use Compatibility and Community Appearance, Policy 17-7:* Adopted land development regulations shall continue to set forth setbacks or separation regulations, landscaping requirements, and minimum open space criteria to enhance living environments.

Staff Analysis

A site plan has been submitted indicating the proposed future development of the entire site. Parcel A (9.99 acres) is proposed for 100 townhomes designed as a traditional neighborhood development and a service station with two additional tenant bays. The site plan, as submitted, requires the approval of these variances.

Residential Use

Adjacent to the north property line, the developer has proposed building an 8 foot high wall, at the request of the adjacent residences, the code requires 6 foot high maximum wall (Section 12-33(O)). In addition, the code requires a forty foot perimeter setback in the planned RM-10 zoning district (Section 12-82(H)(J)). Due to the width of the townhouse units and the site configuration, the applicant has submitted a plan providing a 30 foot rear setback. This setback will be deed restricted from building any accessory structures. The residents to the north have requested that balconies not be permitted along this side, overlooking their development and the developer has also agreed to this restriction.

Staff has had variance applications in the past requesting to exceed the maximum 6 foot high wall requirement. Due this fact, staff has identified this Land Development Code section as one in need of review and perhaps revision. The height of the proposed wall is at the adjacent neighbor's request.

The placement of the residential units, 30 feet from the north property line is due to the overall site design. In order to achieve the 100 dwelling units, the rear row of townhouses were placed at the thirty foot line. A change in dwelling layout, unit square footage, or overall number of units, would allow the site to be developed without the need for the encroachment into the rear setback.

Service Station and Motor Fuel Pump Islands

The original platted parcel for the service station, Parcel B, met the minimum lot requirements for the B-2 zoning district, a minimum of 200 feet on roadway frontage (Section 12-83). The new parcel configuration, based upon the townhouse design reduces the lot frontage on the east to 165 feet. The overall parcel size still meets the code requirements of the B-2 zoning district, 52,500 square feet.

The variance request for the distance separation of the access drive to the nearest residential property line (Section 12-34(Y)(4)) is due to the location of the access point, as approved on the plat. While the plat may be amended, the proximity of the service station to the intersection of Pine Island Road and Orange Drive may preclude the developer from moving the access drive to any point closer to the east.

The final variance request, for the minimum distance for service stations from another service station and between a service station and residential use is a result of the developer changing the use of the parent parcel to residential and due to the existence of a service station at the northeast corner of Pine Island Road and Orange Drive. The code requires a minimum of 250 feet between another service station and also between residential uses and a service station. The service station is proposed to be developed first. As such, any potential purchaser of the residential units will be aware of the developments proximity to the service station. The service station is approximately 110 feet across Pine Island Road from another service station. At this location, the access across Orange Drive has been severed by a large concrete traffic divider. Traffic along the Pine Island Drive corridor can only travel north and south at this location without allowing for east west movement. The traffic divider results in the proposed service station only being able to serve southbound and eastbound traffic, as the other service station can only serve north bound and westbound traffic.

Findings of Fact

Variances:

Section 12-309(B) (1):

The following findings of facts apply to the variance request:

- (a) There **are no** special circumstances and conditions applying to the land and building for which the variances are sought, which circumstances or conditions are peculiar to such land or building and do not apply generally to land or buildings in the same district; any circumstances or conditions **are not** such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of such land or building for which the variance is sought; the alleged hardship **is** self-created by any person having an interest in the property;

The requested variances all result from the change in use of the main parcel from Commercial to Residential. While the change in land use has been approved by the Local Planning Agency and Town Council as compatible and consistent with the residential uses to the north, Staff finds that it is the number of units and the site plan configuration that has triggered the variance requests #1, 2, 4, and 5. Also, the development of Parcel B as a service station, when other commercial uses are allowed in the B-2, Neighborhood Business District, has triggered the need for variance request #3 for distance separation between gas stations and residential properties.

- (b) The granting of the variances **are not** necessary for the reasonable use of the land or building;

The residential units can be developed without the need for variance #1, 2, and 4. In addition, the outparcel B can be developed as a use other than a services station. In fact, the proposed service station site plan indicates two additional tenant bays to be developed at a later date.

- (c) Granting of the requested variances are in harmony with the general purpose and intent of this chapter, and are not injurious to the neighborhood or otherwise detrimental to the public welfare.

The granting of these variances is generally in harmony with the purpose and intent of this chapter. The variance request for the 8 foot high wall is at the request of the adjacent residential neighbors. Also, while the requested variances affect a residential development, all interested purchasers will be aware of the gas station and have a choice whether or not to purchase within the development. The intent of the setbacks regulations is to ensure adequate separation between compatible as well as incompatible uses. The fact that the service station will be first, will ensure that potential residents will be able to choose the amount of commercial impact they are willing to accept.

Staff Recommendation

Staff finds the subject application complete and suitable for transmittal to the Planning and Zoning Board and Town Council for further consideration.

Planning and Zoning Board Recommendation

The Planning and Zoning Board met on February 12, 2003 and made the following motions:

- 1) Section 12-33(O), to increase the height of the wall to 8 feet:

Mr. Waitkus made a motion, seconded by Ms. Lee, to approve. (Motion carried 4-0)

- 2) Section 12-82(H)(J), to reduce the required setback to 30 feet along the north property line:

Ms. Lee made a motion, seconded by Mr. Waitkus, to approve. (Motion carried 4-0)

- 3) Section 12-34(Y)(2), to reduce the distance separation between service stations to 110 feet, and between residential uses to zero (0) feet:

Ms. Lee made a motion, seconded by Ms. Turin, to deny. (Motion carried 4-0)

- 4) Section 12-34(Y)(4), to reduce the required distance to eight (8) feet:

Ms. Lee made a motion, seconded by Mr. Waitkus, to deny. (Motion carried 4-0)

- 5) Section 12-83, to reduce the required lot frontage to 165 feet:

Ms. Lee made a motion, seconded by Ms. Turin, to deny. (Motion carried 3-1 with Mr. Waitkus being opposed)

Exhibits

1. Justification letter
2. Land Use Map
3. Zoning and Aerial Map

Prepared by: _____

Reviewed by: _____

CRITERIA FOR REVIEWING VARIANCE REQUESTS

PINE ISLAND HOMES

January 31, 2003

Variances from the 40' Peripheral Setback Minimum in the Planned Townhouse District along the north property line only. Buildings encroach 10 feet so a 30-foot peripheral setback is provided. Provision of an 8 foot high wall along the north property line where the maximum height allowed is 6 feet.

- 1) There are special circumstances or conditions applying to the land or building for which the variance is sought, which circumstances or conditions are particular to such land or building and do not apply generally to land or buildings in the same district; and that said circumstances or conditions are such that the strict application of the provisions of Chapter 12 of the Code of the Town of Davie would deprive the applicant of the reasonable use of such land or building for which the variance is sought, and that alleged hardship is not self-created by any person having an interest in the property.

The site is constrained by a number of factors including a nearly 3-acre conservation area on the western third of the site and an adjacent 1.3-acre commercial parcel at the northwest corner of Pine Island Road and Orange Drive. This along with the platted openings results in an east west orientation for development. Since the town homes to the north of the subject site also have a generous setback which creates a significant building separation between the two developments, it was more logical to hold the buffer minimum on the south along Orange Drive and especially adjacent to the commercial parcel. This project will comply with the Orange Drive Scenic Corridor (100 feet). The 8 foot high wall is at the request of the abutting property owners.

- 2) The granting of the variance is necessary for the reasonable use of the land or building and that the variance as requested is the minimum variance that will accomplish this purpose.

Through the Flex Rezoning Application under review, the site will have a land use designation of LM 10; therefore reasonable use of the land would be approximately 100 units. A 15-acre commercial site is not appropriate for the two-lane Orange Drive. This is the minimum variance requested (10 feet) without sacrificing 22 units. Nothing can be built in the conservation area. The 8 foot high wall is at the request of the abutting property owners.

- 3) That granting of the variance will be in harmony with the general purpose and intent of Chapter 12 of the Code of the Town of Davie and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

This project is an infill project adjacent to existing townhouse developments of similar or greater density. Meetings have been held with representatives of the adjacent townhouse development to the north. The developer has agreed to provide additional landscape buffering between the two developments and to delete access from Pine Island Road. The proposed project is compatible with the surrounding area and not injurious or detrimental. There is a CBWCD Canal separating this property from the property to the west. This project will comply with the 100-foot Orange Drive Scenic Corridor. In fact the dedication for Orange Drive and the improvements to the canal will be to the public's benefit/welfare. The 8 foot high wall is at the request of the abutting property owners.

Exhibit "A"

JUSTIFICATION FOR REQUESTED VARIANCE

BG Pine Island Corp & 77 Acres Trust ("Applicant") proposes to construct a gas station on the parcel of property generally located at the southeast corner of the intersection of Pine Island Road and Orange Drive in the Town of Davie (the "Property"). In furtherance of this development proposal and related site plan submittal, Applicant currently seeks to obtain from the Town of Davie, Florida ("Town") a variance relieving Applicant from the requirement of ~~Section 12-147(2)~~ of the Town of Davie Code of Ordinances ("Code"), which sets forth the requirements for the location of service stations.

Specifically, the proposed gas station will be adjacent to a proposed residential facility, and is separated from an existing gas station by a 110 to 122 ft. right of way. As discussed below, the requested variance will allow the construction of a gas station, which will be very compatible with the surrounding neighborhood, especially once all proposed construction is complete. Furthermore, the proposed gas station will create an environment similar to many other neighborhoods in Davie, which consist of gas stations designed to serve neighboring residential communities.

A. There are Special Circumstances or Conditions Applying to the Land or Building for which the Variance is Sought.

Special circumstances exist in the present case that warrants the granting of the requested variance. Specifically, the 1.5 acres of land upon which the gas station will be constructed is adjacent to land that currently has a commercial land use designation, which will likely change to a residential land use designation. Therefore, the Applicant in this case is making every effort to make the Property compatible with the future use of the area, as it is not uncommon in the Town of Davie to provide a gas station in close proximity to a residential area. As a result, the granting of this request will create an area that is compatible with the surrounding neighborhoods. Furthermore, the proposed location of the gas station, relative to the adjacent intersection creates a space perfectly designed for such a use, which will benefit the surrounding properties.

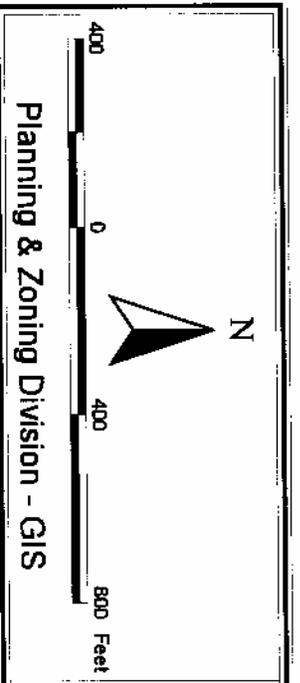
B. The Granting of the Variance is Necessary for the Reasonable Use of the Land and that the Variance as Requested is the Minimum Variance that will Accomplish this Purpose.

This is the minimum variance requested, and all other regulations will be satisfied with the proposed construction. The granting of this minimum variance is necessary for the reasonable use of the property. In fact, the granting of the variance will permit the construction of a project, which will create a specific benefit to the surrounding properties. In addition, Applicant is cooperating fully with the adjacent proposed residential development in order to create an area that will greatly benefit the residents of the Town of Davie. Furthermore, a

sufficient buffer will be created to prevent any possible encroachment liability from any surrounding property owners.

C. Granting of the Variance Will Be in Harmony with the General Intent and Purpose of this Chapter and Will Not Be Injurious to the Neighborhood or Otherwise Detrimental to the Public Welfare.

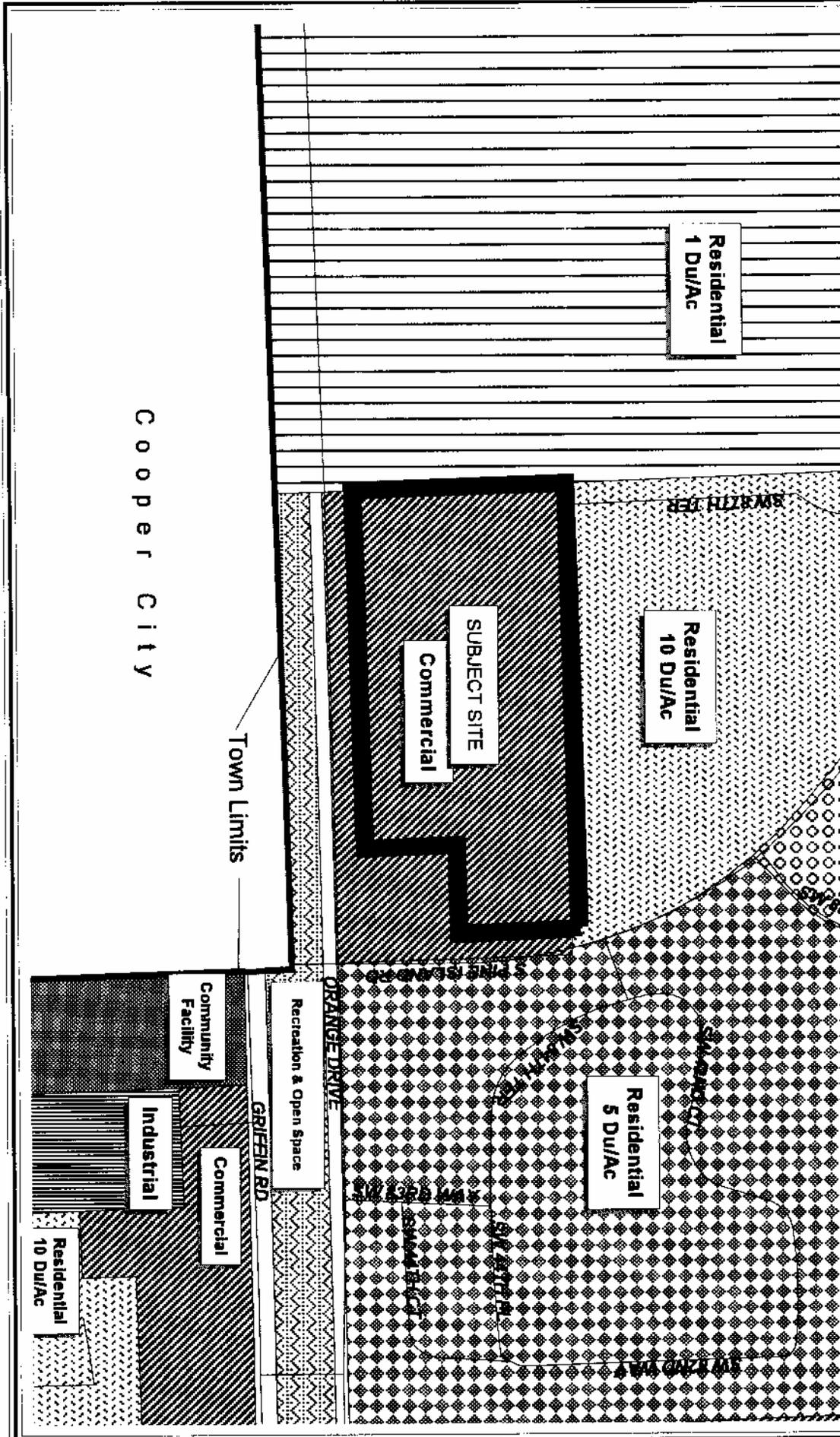
Approval of the requested variances is in harmony with the general intent and purpose of this Chapter. Indeed, the underlying purpose of the Code is to "protect, promote and improve the public health, safety, order, appearance, morals and general welfare of the citizens of the Town of Davie, Florida." Code, Section 12-4. To that end, the Code implements policies regarding, among other things, the preservation of community character and the maintenance of a rational pattern of land use. As addressed above, these policies favor the issuance of the requested variance.



Planning & Zoning Division - GIS



VARIANCE
 V-10-3-02
 Future Land Use Map





Planning & Zoning Division - GIS



VARIANCE
 V-10-3-02
 Zoning and Aerial Map

Date Flown: 12/31/01

