

DEVELOPMENT SERVICES DEPARTMENT
Planning & Zoning Division

MEMORANDUM

PZ 5-30-04

CC: Mark A. Kutney, AICP, Development Services Director
Fernando Leiva, AICP, Planning and Zoning Manager

THRU: Marcie O. Nolan, AICP, Planning Supervisor

FROM: Christopher M. Gratz, Planner II

DATE: May 24, 2004

RE: V 3-1-04 Farm Store

REQUEST: Staff is requesting that the above referenced item, currently scheduled for the June 2, 2004, Town Council meeting be tabled to the meeting on June 16, 2004.

HISTORY: The item was tabled from the April 28, 2004, Planning and Zoning Board meeting to the May 12, 2004, meeting because the motion for denial of the rezoning carried 2-1, and the variance was tabled 3-0.

The item was tabled from the May 19, 2004, Town Council meeting to the June 2, 2004, meeting because of the Planning and Zoning Board's tabling.

JUSTIFICATION: The variance cannot be approved by Town Council until the 1st reading of the rezoning is approved.

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Mark A. Kutney, AICP, Development Services Director/ (954) 797-1101
Prepared by: Christopher M. Gratz, Planner II

SUBJECT: Quasi Judicial Hearing: Variance, V 3-1-04 Farm Store, John D. Voigt/C. William Laystrom, Jr., 6650 Nova Drive/Generally located at the southeast corner of Nova Drive and College Avenue

AFFECTED DISTRICT: District 2

TITLE OF AGENDA ITEM: V 3-1-04 Farm Store, 6650 Nova Drive (B-1)

REPORT IN BRIEF: This is a request for a variance from: §12-34 (Y) (2) of the Land Development Code which states: Location of service stations. There shall be a minimum distance of two hundred fifty (250) feet, shortest airline measurement, between the nearest points on any lot to be occupied for fuel pump islands and/or service station purposes and any lot which is occupied by a church, excluding store front houses of worship, playground, playfield, hospital, elementary school, middle school, zoned, or land use plan designated residential; to: reduce the minimum distance separation on the north between residential property to 122', on the east between the existing lot with fuel pump islands to 214.26', and on the west between residential property to 132.67'.

The request is for 1.252 acres located at the southwest corner of Nova Drive and College Avenue, occupied by a vacant convenience store, canopy, and motor fuel pumps, to re-establish the use of motor fuel pumps. This variance is contingent upon approval of the request to rezone the site from: B-1, Neighborhood Business District to: B-2, Community Business District (ZB 3-2-04). Since the B-1, Neighborhood Business District zoning does not permit motor fuel pumps; a rezoning request has been made because the applicant wants to re-establish the use.

According to the Town of Davie Occupational License database, legal operations of the business ceased on October 25, 2002. When a nonconforming use of a structure or building, or structure or building and premises in combination, is discontinued or abandoned for ninety (90) consecutive days or for a total of six (6) months during any two-year period it cannot be used again except in conformance with the regulations of the district in which it is located.

Approval of the variance is required because the site is less than two hundred fifty (250) feet from a residential use and another lot occupied by a motor fuel pump. The residential uses are 122' to the north and 132.67' to the west, and another lot occupied by a motor fuel pump is 214.26' across the street at the northeast corner of Nova Drive and College Avenue.

Subsequent to the rezoning and variance approvals, a site plan meeting all applicable Codes and Ordinances must be submitted and approved.

Policy 10-7 of the Future Land Use Plan requires that rezoning and variance requests for parcels located within the Regional Activity Center (RAC) be evaluated against the comprehensive plan policies relating to the RAC designation, and shall further the intent of the RAC, as expressed through plan policies contained within the comprehensive plan. The following is the evaluation against the applicable Comprehensive Plan policies.

The request does not fulfill Policy 10-6 of the Future Land Use Plan. This policy states that development activities within the RAC should stimulate quality redevelopment of businesses, particularly development requests for increased intensity above that permitted by the existing zoning designations of the land. The requested variance is needed to allow a use that is not separated by more than 250' from another residential use or another lot occupied by a motor fuel pump as required by the Land Development Code. The changes to signage and landscaping that will be required with the site plan approval cannot be considered quality redevelopment activities.

The request does not fulfill Policy 10-1 of the Future Land Use Plan. This policy states that the RAC designation shall promote and encourage redevelopment that facilitates a coordinated and balanced mix of land uses. There are seven (7) existing convenience stores with motor fuel pumps within a one (1) mile radius of this site which serve to meet the basic needs of students, residents, employees and visitors to the South Florida Education Center. The development potential of vacant parcel to the west (Parcel A of the Farm Store -Davie Plat) will be limited by approving this request. A site plan for a 756 square foot convenience store was approved for this parcel in 1995, but was never constructed and the property is overgrown invasive exotic Maleluca trees.

In conclusion, granting of a variance to allow a lot occupied by a motor fuel pump to be located closer than 250' from two (2) residential uses and another lot occupied by a motor fuel pump does not further the intent of the Regional Activity Center as required by the Comprehensive Plan.

PREVIOUS ACTIONS: The item was tabled by Town Council prior to consideration at the May 19, 2004, meeting to June 2, 2004, because the Planning and Zoning Board tabled the request at its March 28, 2004 meeting to May 12, 2004.

CONCURRENCES: At the May 12, 2004, Planning and Zoning Board meeting, Mr. McLaughlin made a motion, seconded by Ms. Lee, to approve. Motion carried 4-1 with Vice-Chair Turin being opposed.

FISCAL IMPACT: None

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

This variance may be considered concurrently with the rezoning petition ZB 3-2-04, but cannot be approved until final adoption of the ordinance to rezone the property.

Attachment(s): Planning Report, Justification, Survey, List of Gas stations/Convenience Stores, Radius Map, Future Land Use Plan Map, Zoning and Aerial Map

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



Applicant Information

Owner:

Name: Valentina Rodriques
B& R Real Estate Services, LLC
Address: 5008 Mallards Place
City: Coconut Creek, FL 33073
Phone: (954) 467-3846

Petitioner:

Name: John D. Voigt/C. William Laystrom, Jr.
Doumar, Allsworth, et al.
Address: 1177 SE 3 Avenue
City: Fort Lauderdale, FL 33316
Phone: (954) 762-3400

Background Information

Date of Notification: April 21, 2004 **Number of Notifications:** 15

Application History: The Planning and Zoning Board recommended approval on May 12, 2004.

Application Request: Variance **FROM:** §12-34 (Y) (2) of the Land Development Code which states: Location of service stations. There shall be a minimum distance of two hundred fifty (250) feet, shortest airline measurement, between the nearest points on any lot to be occupied for fuel pump islands and/or service station purposes and any lot which is occupied by a church, excluding store front houses of worship, playground, playfield, hospital, elementary school, middle school, zoned, or land use plan designated residential; **TO:** reduce the minimum distance separation on the north between residential property to 122', on the east between the existing lot with fuel pump islands to 214.26', and on the west between residential property to 132.67'.

Address/Location: 6650 Nova Drive/Generally located at the southwest corner of Nova Drive and College Avenue

Future Land Use Plan Map: Regional Activity Center (RAC)

Existing Zoning: B-1, Neighborhood Business District

Proposed Zoning: B-2, Community Business District

Existing Use: Vacant convenience store, canopy, fuel pumps

Proposed Use: Convenience store, canopy, fuel pumps

Parcel Size: 1.252 acres (54,535.56 square feet)

		<u>Surrounding Future Land Use Plan Map Designations:</u>
	<u>Surrounding Uses:</u>	
North:	Gardens at Nova	Regional Activity Center
South:	South Florida Education Center	Regional Activity Center
East:	McFatter Vocational Technical Institute	Regional Activity Center
West:	Vacant parcel; Nova Park Apartments	Regional Activity Center

Surrounding Zoning:

North: RM-16, Medium-High Density Dwelling District
South: CF, Community Facilities District
East: CF, Community Facilities District
West: B-1, Neighborhood Business District;
 RM-16, Medium-High Density Dwelling District

Zoning History

Related Zoning History:

Available records indicate the parcel has been in the Town of Davie since 1974.

The site plan, SP 5-4-95 Farm Stores, for a 756 square foot retail store on Parcel A of the Farm Store Plat, west of the subject site, was approved on May 23, 1995.

Previous Requests on same property:

The plat, P 3-1-87 Farm Store - Davie, was approved on February 3, 1988, and was subsequently recorded in Plat Book 139, Page 37, of the official records of Broward County.

The site plan, SP 5-1-88 Farm Stores, was approved on October 18, 1989.

The site plan, SP 6-2-90 Marathon Petroleum (Starvin Marvin Speedway), was approved on August 24, 1990. This approval was subsequent to a vested rights determination. The site plan, SP 5-1-88, had expired before the owner obtained a building permit. During this time the Land Development Code was revised to exclude motor fuel pumps from the B-1, Neighborhood Business District. The Town Attorney found that because the owner had made expenditures for off site improvements related to the project and had continually pursued development of the site that vested rights had been established.

Applicable Codes and Ordinances

§12-34 (Y) Service Stations and Motor Fuel Pump Islands: The location of service stations and motor fuel pump islands as a primary or an accessory use shall be subject to the following limitations and restrictions:

(1) Street frontage and area. A lot to be occupied by a service station or pump islands shall not have less than one hundred fifty (150) feet street frontage with an area of not less than forty-three thousand five hundred sixty (43,560) square feet.

(2) Location of service stations. There shall be a minimum distance of two hundred fifty (250) feet, shortest airline measurement, between the nearest points on any lot to be occupied for fuel pump islands and/or service station purposes and any lot which is occupied by a church, excluding store front houses of worship, playground, playfield, hospital, elementary school, middle school, zoned, or land use plan designated residential. The application shall furnish a certified survey from a land surveyor registered in the State of Florida, indicating the distance between the proposed facility and any applicable above uses.

§12-40 (4) of the Land Development Code, Nonconforming uses of buildings, structures and premises states: When a nonconforming use of a structure or building, or structure or building and premises in combination, is discontinued or abandoned for ninety (90) consecutive days or for a total of six (6) months during any two-year period, except when government action impedes access to the premises, the structure, or structure and premises in combination, shall not thereafter be used except in conformance with the regulations of the district in which it is located.

§12-83 of the Land Development Code, Conventional Nonresidential Development Standards, B-2, Community Business District, requires the following minimums: lot area of 52,500 square feet, 200' frontage and depth, 25' setback adjacent to public or private rights-of-way, 20' setback abutting residentially zoned properties, 35' maximum building height, 10' separation between buildings, 40 percent maximum building coverage, and 30 percent minimum open space.

§12-208 (A) (29) of the Land Development Code, Requirements for off-street parking, Retail Stores. One (1) space for each two hundred and fifty (250) square feet of gross floor area.

§12-309 of the Land Development Code, review for variances.

Comprehensive Plan Considerations

Planning Area: The subject property falls within Planning Area 8. This Planning Area is the heart of Davie and is the most diverse, characterized by older, small-scale commercial development, older single-family residential neighborhoods, and newer, large-scale multi-family residential developments that serve the rapidly growing South Florida Education Center (SFEC). It is bounded on the north by Nova Drive, south by Orange Drive, east by Florida's Turnpike, and west by University Drive. The planning area encompasses the

downtown Davie Business District, where western theme architecture is required, the Davie Town Hall and Rodeo Arena, two large mobile home communities, and industrial land.

Broward County Land Use Plan: The subject site falls within Flexibility Zone 99.

Applicable Goals, Objectives & Policies: *Future Land Use Plan, Objective 5: Consistency of Development with Comprehensive Plan, Policy 5-2:* The (re)zoning, (re)planning, and site planning of land shall be in compliance with the density ranges shown on the Davie Future Land Use Plan map and the applicable Future Land Use Designation provisions as contained in the Permitted Use portion of the Implementation Section.

Future Land Use Plan, Objective 5: Consistency of Development with Comprehensive Plan, Policy 7-1: The Town shall endeavor to expand its economic base through expansion of the commercial sector of its economy.

Future Land Use Plan, Objective 5: Consistency of Development with Comprehensive Plan, Policy 7-3: Zoning regulations shall provide for varying intensities of commercial development, and direct application of appropriate districts where compatible with adjacent and surrounding residential uses.

Future Land Use Plan, Objective 5: Consistency of Development with Comprehensive Plan, Policy 10-1: The Regional Activity Center land use designation shall promote and encourage large-scale development and redevelopment as well as small parcel infill development redevelopment that facilitates a coordinated and balanced mix of land uses providing for: educational facilities; a wide selection of housing types for all income ranges; shopping opportunities to meet the basic and expanded needs of students, residents, employees and visitors; research, training and other educational support uses; recreation; and, employment opportunities, including the use of mixed residential/nonresidential land uses.

Future Land Use Plan, Objective 5: Consistency of Development with Comprehensive Plan, Policy 10-6: Development activities within the RAC should stimulate quality redevelopment of businesses and dwellings, particularly development requests for increased density or intensity above that permitted by the existing zoning designations of the land.

Future Land Use Plan, Objective 5: Consistency of Development with Comprehensive Plan, Policy 10-7: Rezoning and variance requests within the RAC shall be evaluated against the comprehensive plan policies relating to the Regional Activity Center designation, and shall further the intent of the RAC, as expressed through plan policies contained herein.

Future Land Use Plan, Objective 17: Land Use Compatibility and Community Appearance, Policy 17-3: Each development proposal shall be reviewed with respect to its compatibility with adjacent existing and planned uses.

Future Land Use Plan, Objective 17: Land Use Compatibility and Community Appearance, Policy 17-5: Land development regulations shall provide for the eventual phasing out of non-conforming uses.

Application Details and Staff Analysis

This is a request for a variance from: §12-34 (Y) (2) of the Land Development Code which states: Location of service stations. There shall be a minimum distance of two hundred fifty (250) feet, shortest airline measurement, between the nearest points on any lot to be occupied for fuel pump islands and/or service station purposes and any lot which is occupied by a church, excluding store front houses of worship, playground, playfield, hospital, elementary school, middle school, zoned, or land use plan designated residential; to: reduce the minimum distance separation on the north between residential property to 122', on the east between the existing lot with fuel pump islands to 214.26', and on the west between residential property to 132.67'.

The request is for 1.252 acres located at the southwest corner of Nova Drive and College Avenue, occupied by a vacant convenience store, canopy, and motor fuel pumps, to re-establish the use of motor fuel pumps. This variance is contingent upon approval of the request to rezone the site from: B-1, Neighborhood Business District to: B-2, Community Business District (ZB 3-2-04). Since the B-1, Neighborhood Business District zoning does not permit motor fuel pumps; a rezoning request has been made because the applicant wants to re-establish the use.

According to the Town of Davie Occupational License database, legal operations of the business ceased on October 25, 2002. When a nonconforming use of a structure or building, or structure or building and premises in combination, is discontinued or abandoned for ninety (90) consecutive days or for a total of six (6) months during any two-year period it cannot be used again except in conformance with the regulations of the district in which it is located.

Approval of the variance is required because the site is less than two hundred fifty (250) feet from a residential use and another lot occupied by a motor fuel pump. The residential uses are 122' to the north and 132.67' to the west, and another lot occupied by a motor fuel pump is 214.26' across the street at the northeast corner of Nova Drive and College Avenue. Subsequent to the rezoning and variance approvals, a site plan meeting all applicable Codes and Ordinances must be submitted and approved.

Policy 10-7 of the Future Land Use Plan requires that rezoning and variance requests for parcels located within the Regional Activity Center (RAC) be evaluated against the comprehensive plan policies relating to the RAC designation, and shall further the intent of the RAC, as expressed through plan policies contained within the comprehensive plan. The following is the evaluation against the applicable Comprehensive Plan policies.

The request does not fulfill Policy 10-6 of the Future Land Use Plan. This policy states that development activities within the RAC should stimulate quality redevelopment of businesses, particularly development requests for increased intensity above that permitted by the existing zoning designations of the land. The requested variance is needed to allow a use that is not separated by more than 250' from another residential use or another lot occupied by a motor

fuel pump as required by the Land Development Code. The changes to signage and landscaping that will be required with the site plan approval cannot be considered quality redevelopment activities.

The request does not fulfill Policy 10-1 of the Future Land Use Plan. This policy states that the RAC designation shall promote and encourage redevelopment that facilitates a coordinated and balanced mix of land uses. There are seven (7) existing convenience stores with motor fuel pumps within a one (1) mile radius of this site which serve to meet the basic needs of students, residents, employees and visitors to the South Florida Education Center. The development potential of vacant parcel to the west (Parcel A of the Farm Store -Davie Plat) will be limited by approving this request. A site plan for a 756 square foot convenience store was approved for this parcel in 1995, but was never constructed and the property is overgrown invasive exotic Maleluca trees.

In conclusion, granting of a variance to allow a lot occupied by a motor fuel pump to be located closer than 250' from two (2) residential uses and another lot occupied by a motor fuel pump does not further the intent of the Regional Activity Center as required by the Comprehensive Plan.

Findings of Fact

Variances:

Section 12-309(B) (1):

The following findings of facts apply to the variance request:

- (a) There are not special circumstances or conditions applying to the land or building for which the variance is sought;

The parcel is platted land at the entrance to the South Florida Education Center and can support a use that does not require a variance or rezoning.

which circumstances or conditions are not peculiar to such land or building and do apply generally to land or buildings in the same district;

The parcel has platted access and development rights and can be used in accordance with the B-1, Neighborhood Business District without a variance or rezoning.

and that said circumstances or conditions are not such that the strict application of the provisions of this chapter would not deprive the application of the reasonable use of such land or building for which the variances are sought;

The parcel can be reasonably used without a variance. There are a number of uses that further the intent of the RAC and do not require a variance. The request represents an unjustifiable hardship claim that the best use of the land is being lost.

and that alleged hardship is self-created by any person having an interest in the property.

The need for a variance is created by the owner's desire for the use of motor fuel pumps.

- (b) The granting of the variance is not 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.

This platted parcel can be used without the need for any variance or rezoning; however the request is the minimum needed to allow the use to be located closer than 250' from two (2) residential uses and another lot occupied by a motor fuel pump.

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

Approval of this variance for distance separation between residential uses and another lot occupied by a motor fuel pumps is not appropriate for a number of reasons. There are seven (7) existing convenience stores with motor fuel pumps within a one (1) mile radius of this site which serve to meet the basic needs of students, residents, employees and visitors to the South Florida Education Center. The required evaluation of this request against the Policies in the Comprehensive Plan relative to the RAC and its intent reveals that approval of the request would be inconsistent with the Comprehensive Plan. When considering a variance needed for a more intense use in the RAC, the proposal should be for quality redevelopment. The changes that will be required with site plan approval to the signage and landscaping cannot be considered quality redevelopment. This use at this location does not illustrate coordinated and well balanced mix of land uses because it is an illogical use for this site. The development potential of the adjacent parcel to the west is greatly limited by allowing the use on this parcel as evidenced by an expired site plan for a convenience store on the adjacent property to the west.

Staff Recommendation

Staff finds the subject application complete and suitable for transmittal to the Planning and Zoning Board and Town Council for further consideration. This variance may be considered concurrently with the rezoning petition ZB 3-2-04, but cannot be approved until final adoption of the ordinance to rezone the property.

Planning and Zoning Board Recommendation

At the May 12, 2004, Planning and Zoning Board meeting, Mr. McLaughlin made a motion, seconded by Ms. Lee, to approve. Motion carried 4-1 with Vice-Chair Turin being opposed.

Town Council Action

Exhibits

1. Justification
2. Survey
3. List of Gas stations/Convenience Stores
4. Radius Map
5. Future Land Use Plan Map
6. Zoning and Aerial Map

Prepared by: _____

Reviewed by: _____

Applicant: B&R Real Estate Services, LLC
Project: Farm Store Service Station/Convenience Store

JUSTIFICATION STATEMENT
FOR VARIANCE REQUEST

The subject site contains approximately 1.252 acres located on the southeast corner of Nova Drive and College Avenue. The site currently contains a service station and convenience store combination that has been in existence on the site since the 1980s. Immediately to the south of the property is land owned by Nova University and the South Florida Education Center (SFEC), which is zoned CF. Immediately to the west is vacant land zoned B-1, while further to the west is a residential development zoned RM-16. Immediately across Nova Drive to the north is a residential apartment complex, which is also zoned RM-16. Diagonally across the intersection to the northeast is another service station which is located on property zoned M-4 under the old Broward County Code, and other commercial/industrial development. Immediately across College Avenue to the east is land owned by McFatter Vocational Technical Institute, which is zoned CF.

Both the Broward County and Town of Davie land use for the property is RAC, Regional Activity Center, which allows virtually any use of the property. The service station and convenience store were originally constructed on the site when the property was still within unincorporated Broward County and subject to the Broward County Code. Obviously, at the time of construction, both the service station and convenience store complied with all Broward County zoning codes and ordinances. Subsequently, the property was annexed into the Town of Davie and continued to lawfully operate as a service station and convenience store.

At some point subsequent to the annexation into the Town of Davie, the Town of Davie amended its Code as to service stations to require they be placed in B-2 zoning districts, that they have minimum lot size and frontage, and that they have minimum distance separation of 250 feet from other service stations and from residentially zoned property. It is believed, that the service station/convenience store preexisted the service station diagonally across the street which is within 250 feet. It is believed that the newer service station did not have to obtain a variance to be placed within the 250 foot distance of the applicant's service station.

Applicant: B&R Real Estate Services, LLC
Project: Farm Store Service Station/Convenience Store

The applicant has confirmed that the service station and convenience store were in existence prior to the construction of the apartment complex immediately across Nova Drive to the north, which is also within the 2,500 foot distance separation area. As a result, the variance is required only because of subsequent structures that were erected prior to the change in the Town of Davie Code, while the rezoning is required only because of the annexation and the subsequent amendment to the Town of Davie Code.

It is the position of the applicant, however, that neither the rezoning nor the variance applications are required. This is because under existing case law this is a legal preexisting use that was made into a nonconforming use by the subsequent annexation and amendment to the Town of Davie Code. The only occurrence requiring the filing of these two applications is the temporary closing of the service station and convenience store for a period in excess of 90 days. This temporary closure triggers the applicability of Section 12-37(A)(3) of the Town of Davie Code regarding nonconforming uses. It is the applicant's position that the use of a service station and convenience store was never abandoned in that both remained on the premises and they were marketed to prospective purchasers as a service station and convenience store, despite the temporary closing. As a result, the proposed use is in essence vested, or "grandfathered", rather than an abandoned non-conforming use.

It should be noted, that the service station as it has existed since the 1980s and is proposed to reopen, will sell gasoline products only. The service station will not provide vehicular repair service of a mechanical nature and will not perform body work on vehicles. There will be no storage of vehicles on site and no ancillary uses such as car rental parking services. Applicant is agreeable to a restriction that would prohibit such uses in the future as well.

Section 12-34(Y)(2) states:

"There shall be a minimum distance of two hundred fifty (250) feet, shortest airline measurement, between the nearest points of any lot to be occupied for fuel pump

Applicant: B&R Real Estate Services, LLC
Project: Farm Store Service Station/Convenience Store

islands and/or service station purposes and any lot which is occupied by a church, playground, play field, hospital, elementary school, middle school, high school, or any lot to be occupied for service station purposes and any lot which is occupied, planned, zoned, or land use plan designated residential."

The existing service station/fuel pump islands are on a parcel that is located 214.26 feet from the service station diagonally across the intersection of Nova Drive and College Avenue on the northeast corner. The subject site is 122 feet from College Court Townhouses (CCT), which is a residential development to the north across Nova Drive. Finally, the subject site is 132.67 feet from Nova Park Condominium which is to the west across the vacant tract of land. The requested variance is to reduce the required separation between the site and the existing service station from 250 feet to 214.26 feet and to reduce the separation from the two residential complexes from 250 feet to 122 feet and 132.67 feet, respectively.

A review of the variance request should include a consideration of the criteria listed in Section 12-309(B)(1) of the Town of Davie Land Development Code to determine if the request should be favorably reviewed. These criteria with respect to the subject request are discussed below.

Criterion (a): Whether or not there are special circumstances or conditions applying to the land or building for which the variance is 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; 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.

Special circumstances or conditions applying to the subject property result from the original construction of service station

Applicant: B&R Real Estate Services, LLC
Project: Farm Store Service Station/Convenience Store

and convenience store in the 1980s. When the property was purchased and the structures erected, the property was in unincorporated Broward County and subject to a different Land Development Code. At that time the site met all applicable criteria. Subsequently, the site was annexed into the Town of Davie and became subject to the Town of Davie Land Development Code. It is the applicant's understanding that the Land Development Code was later amended to limit the location of fuel pump islands in B-2 zoning districts only. The Town of Davie had placed the B-1 zoning designation on the subject property at the time of annexation.

The service station/fuel pump islands continued to be operated continuously without problem or objection as a nonconforming use. The variance is now required only because the station was closed for a period of time while being sold and now seeks to reopen.

Subsequent to the original construction of the service station and convenience store, another service station was erected diagonally across the street to the northeast. At the time, it is believed that this service station did not have to apply for a variance because the requirement was not in existence. Further, the residential development to the north was constructed well after the property was within the Town of Davie and the distance separation regulations were in place. The residential development was not required to adhere to the distance separation requirement at that time and again no variance was required. It is unknown how long the residential development to the west has been in existence relative to the applicant's business, but it has long been separated by the vacant B-1 parcel between the two.

To deny the variance as to the distance separation requirements would deprive the petitioner of the reasonable use of the property in that it was purchased as a convenience store with fuel pump islands and can not be utilized for that purpose without the granting of the variance. Absolutely none of these circumstances were self-created by the petitioner or by those in ownership of the property prior to the petitioner.

As a result, the variance request satisfies this criterion.

Applicant: B&R Real Estate Services, LLC
Project: Farm Store Service Station/Convenience Store

Criterion (b): Whether or not 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.

The granting of the variance is absolutely necessary for the reasonable use of the land and building as a convenience store with fuel pump islands. A service station cannot exist at that site without the granting of the variance, even though the service station preexisted the surrounding uses which now cause the need for the variance. The variance requested is the minimum necessary to satisfy the distance separation requirements.

As a result, the variance request satisfies this criterion.

Criterion (c): Whether or not that granting 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.

The fact that the convenience store with fuel pump islands has existed for years and has proven it is not injurious to the neighborhood or otherwise detrimental to the public welfare. Upgrading the site and reopening the same use will in no way have an adverse effect and will be in harmony with the general purpose and intent of Chapter 12. If there are any concerns, they can be addressed through a voluntary declaration of restrictions on the property. The service station and convenience store were designed to serve the neighborhood and adjoining commercial and industrial uses and, therefore, are compatible with those uses.

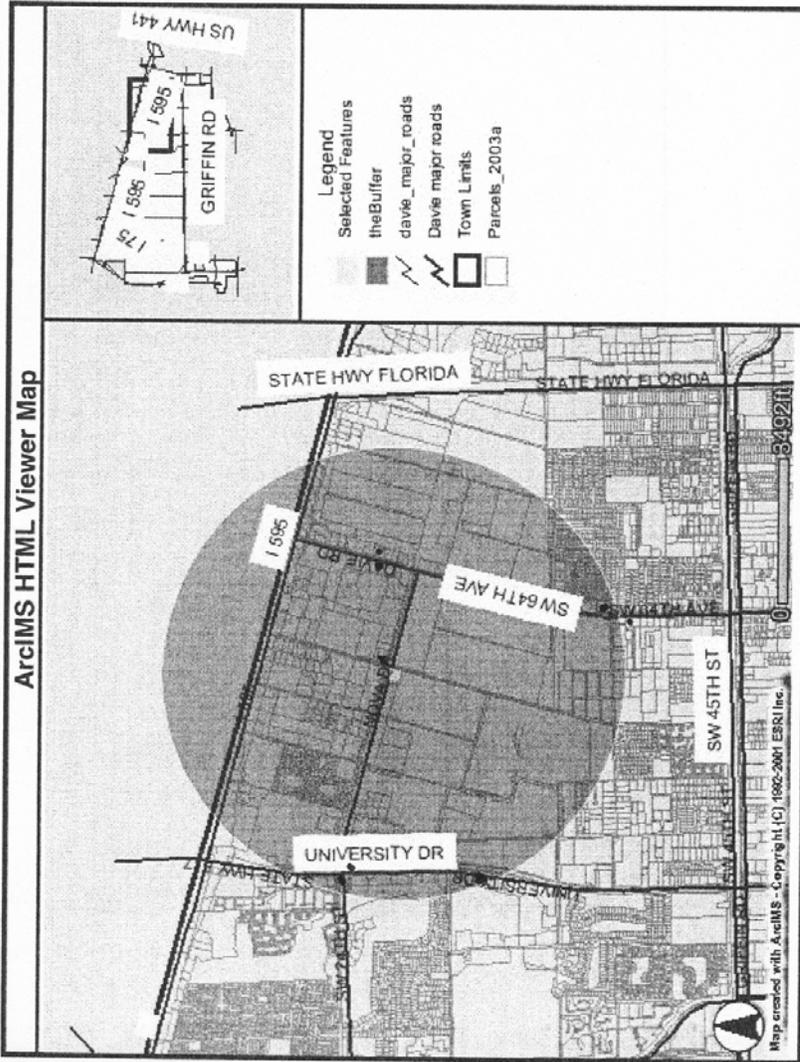
As a result, the variance request satisfies this criterion.

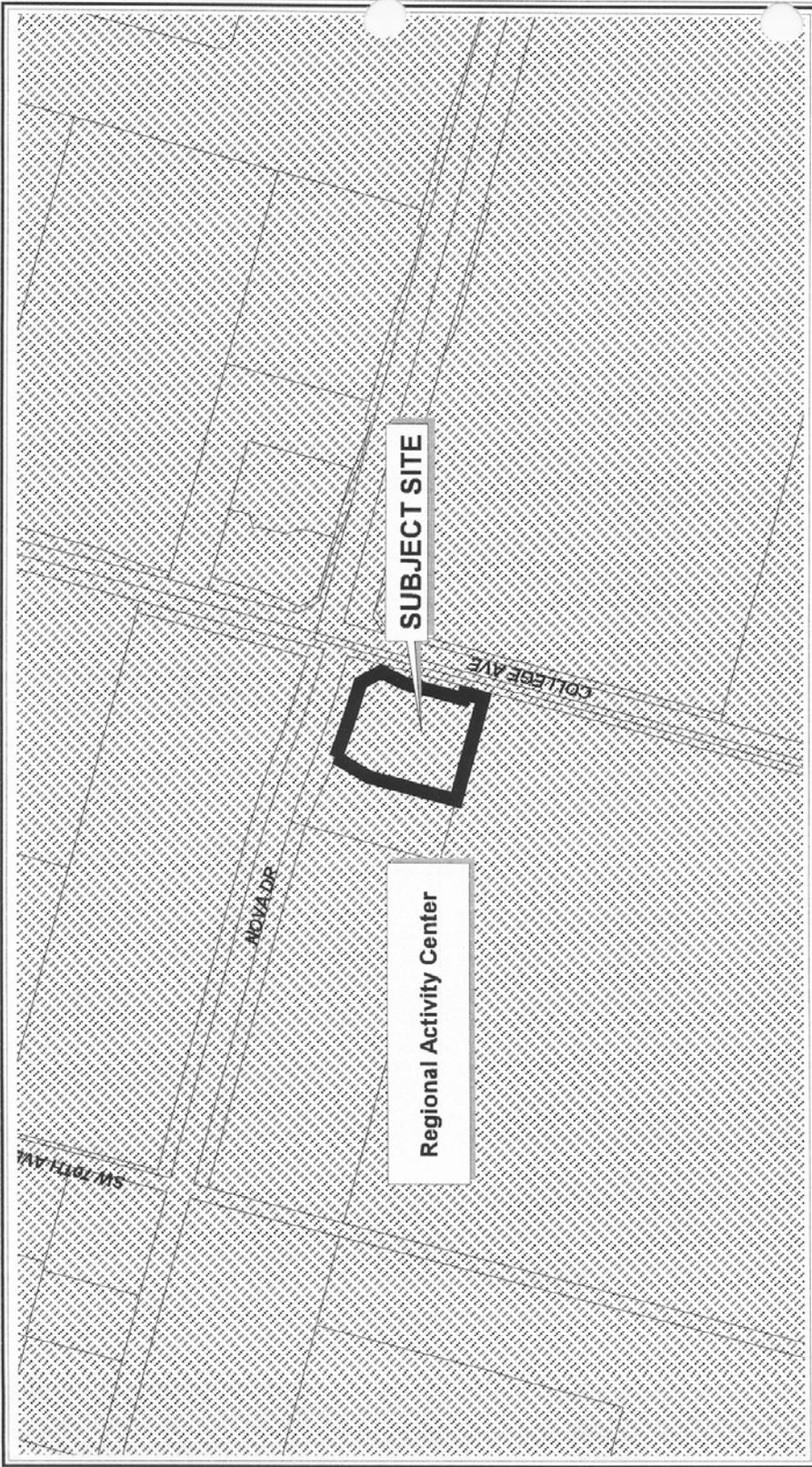
As has been demonstrated, the requesting variance from the distance separation requirement is consistent with the adopted Town of Davie Comprehensive Plan, the Town Future Land Use Plan Map, and meets all the criteria contained in the Land Development Code. As a result, the variance request merits favorable consideration.

Gas stations/Convenience Stores with a 1 mile radius of 6650 Nova Drive

Tom Thumb Nova Drive
Shell Nova Drive
Mobile Nova Drive

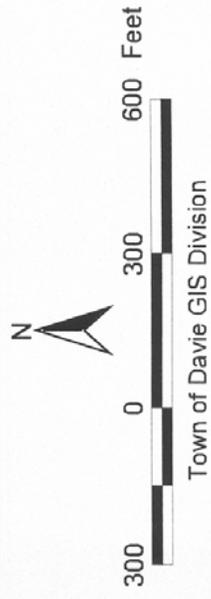
Hess Davie Road
Racetrac Davie Road
Mobile Davie Road
Texaco Davie Road

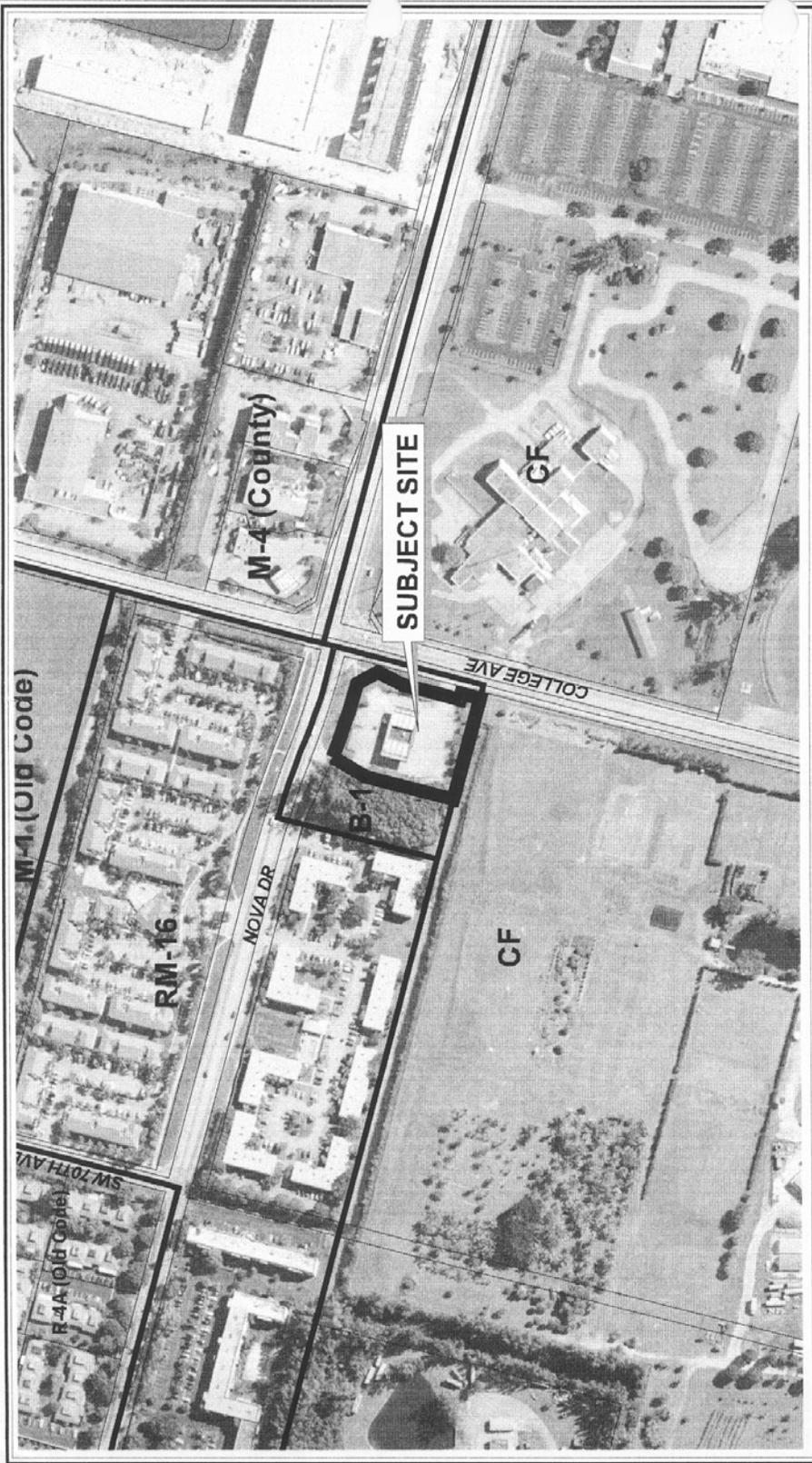




**VARIANCE
V 3-1-04
Future Land Use Map**

Prepared By: ID
Date Prepared: 4/5/04





VARIANCE
V 3-1-04
Zoning and Aerial Map

Prepared By: ID
 Date Prepared: 4/5/04



Date Flown:
 12/31/02



300 0 300 600 Feet



Town of Davie GIS Division