

# TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Mark Kutney, AICP/(954) 797-1101

**SUBJECT:** Variance

Project Name and Location: Michele Mellgren/Miles and Hamilton Forman. 6405 Nova Drive/Generally located at the northwest corner of Nova Drive and Davie Road.

**TITLE OF AGENDA ITEM:**

V 1-2-01 Applicant: Michele Mellgren, petitioner/Miles and Hamilton Forman, Trustees, owners.

**REPORT IN BRIEF:**

Applicant is requesting a variance **FROM:** the site development section of the Forman Agreement for commercial retail uses in the M-4, Industrial District which requires thirty (30) percent minimum open space **TO:** allow 21.4 percent open space on the Ruby Tuesdays parcel, 20 percent open space on the Westport Plaza parcel exclusive of the outparcel, and 20 percent open space on the Westport Plaza outparcel.

**PREVIOUS ACTIONS:** None.

**CONCURRENCES:**

The Planning and Zoning Board tabled the request at its February 28, 2001 meeting to the March 14, 2001 meeting in order for the Town Attorney to render an opinion on the amount of open space required by the Forman Agreement (motion carried 5-0).

The Planning and Zoning Board recommended conditional approval of the request at its March 14, 2001 meeting. The condition of approval is as follows: the applicant shall install and maintain royal palm trees along the southern boundary of the subject site, from the intersection of Nova Drive and Davie Road to the western boundary of the subject site, that are of the same height and spacing at the time of installation as the royal palm trees planted along Davie Road (motion carried 3-1, Mr. Davis dissenting).

**FISCAL IMPACT:** None.

**RECOMMENDATION(S):** Motion to deny.

**Attachment(s):** Applicant's Justification Statement, Land Use Map, Subject Site Map, Aerial, Conceptual Site Plan.

**Application #: V 1-2-01**

**Revisions:**

**Exhibit "A"**

**Original Report Date:**

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

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**APPLICANT INFORMATION**

**Owner:**

**Name:** Miles Austin Forman Tr. &  
Hamilton C. Forman Tr.  
**Address:** PO Box 292037  
**City:** Davie, FL 33329-2037  
**Phone:** (954)763-8111

**Agent:**

**Name:** Michele C. Mellgren, AICP  
**Address:** 300 SW 2 Street, Suite 3  
**City:** Ft Lauderdale, FL 33312  
**Phone:** (954)467-2322

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**BACKGROUND INFORMATION**

**Date of Notification:** February 21, 2001    **Number of Notifications:** 10

**Application Request:** A variance **FROM:** the site development section of the Forman Agreement for commercial retail uses in the M-4, Industrial District which requires thirty (30) percent minimum open space **TO:** allow 21.4 percent open space on the Ruby Tuesdays parcel, 20 percent open space on the Westport Plaza parcel exclusive of the outparcel, and 20 percent open space on the Westport Plaza outparcel.

**Address/Location:** 6405 Nova Drive/Generally located at the northwest corner of Nova Drive and Davie Road.

**Future Land Use Plan Designation:** Regional Activity Center

**Zoning:** M-4, Industrial District, Broward County Code (Forman Agreement)

**Existing Use:** Ruby Tuesdays Restaurant, Vacant

**Proposed Use:** Ruby Tuesdays Restaurant, Publix Grocery Store, Retail Center, Commercial Outparcel

**Parcel Size:** 6.268 acres (272,990.52 square feet)

**Surrounding Uses:**

**Surrounding Land  
Use Plan Designation:**

<b>North:</b>	Vacant Land (Rockpit)	Regional Activity Center
<b>South:</b>	Nova Drive, then McFatter Technical Institute	Regional Activity Center
<b>East:</b>	Race Track Gas Station, Family Tribute Center	Regional Activity Center
<b>West:</b>	College Court Townhouses, Vacant	Regional Activity Center

**Surrounding Zoning:**

<b>North:</b>	M-4, Industrial District, Broward County Code (Forman Agreement)
<b>South:</b>	CF, Community Facilities
<b>East:</b>	M-4, Industrial District, Broward County Code (Forman Agreement)
<b>West:</b>	RM-16, Medium-High Dwelling District, M-1, Light Industrial District, Old Code, M-3, General Industrial District, Old Code

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**ZONING HISTORY**

**Related Zoning History:** This parcel is inside the Regional Activity Center Future Land Use Plan designation that was adopted by Town Council in 1998.

**Previous Request on same property:**

Town Council approved the Westport Business Park Parcels A & B Plat (143-5) on May 3, 1989.

Town Council approved the application to reserve up to seven (7) acres of commercial flexibility to the Westport Business Park Parcels A & B Plat (143-5) on June 6, 1990.

Town Council approved the Ruby Tuesday restaurant site plan, SP 12-5-99, on January 19, 2000.

A site plan application for Westport Plaza (SP 12-2-00), is currently in-house for review, pending the outcome of this variance request.

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**APPLICATION DETAILS**

The petitioner is proposing to develop the three (3) parcels that comprise this 6.268 acre site with a 8,450 square-foot retail center, 27,887 square-foot Publix grocery store, 6,405 square foot Ruby Tuesday restaurant (existing), and an outparcel comprised of a 29,048 square feet building that will accommodate a restaurant or other commercial use. A site plan, known as Westport Plaza (SP 12-2-00), for the retail center, outparcel and the Publix Grocery Store has been submitted. The petitioner has included in this variance request the Ruby Tuesday restaurant site since the petitioner intends on using the restaurant parcel for cross access to Westport Plaza.

The variance request to reduce the open space requirement from thirty (30) percent to twenty (20) percent is based upon the petitioner’s supposition that because of the unusual “L” shaped configuration of the subject site a reduction in open space is necessary to allow

for safe and sufficient on-site parking and circulation to serve current and future uses.

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### **Applicable Codes and Ordinances**

1. The Forman Agreement requires thirty (30) percent minimum open space in the B-1 and B-2, Business Districts, where the purposed commercial uses would first be permitted under the Forman Agreement's cumulative zoning structure.
  2. The Broward County Code, the effective zoning code under the Forman Agreement, provides for the consideration of variances for height, area, number of required parking spaces, or plant units, size of structure or size of yards and open spaces, and separation requirements.
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### **Comprehensive Plan Considerations**

**Planning Area:** The subject property falls within Planning Area 6. Planning Area 6 includes lands located south of State Road 84, east of University Drive and north of Nova Drive, together with lands located east of the Florida Turnpike and west of State Road 7, south of State Road 84 and north of the south Town limits. The majority of this planning area is industrially zoned and land used plan designated. There are small commercial parcels along the State Road 7 corridor with one large retail center being located on the southeast corner of University Drive and State Road 84. Commercial flexibility has been applied to lands designated industrial on Nova Drive.

**Broward County Land Use Plan:** The subject site falls within Flexibility Zone 99. The Westport Business Park Plat allows 236,988 square feet of industrial use and 162,000 square feet of commercial use on Parcels B, B-2, B-3, B-4, B-5, through the allocation of 7 acres of Commercial to Industrial flexibility approved by both the Town and Broward County.

**Concurrency Consideration:** None.

### **Goals, Objectives, and Policies:**

Policy 1-13: New non-residential development shall provide pretreatment for stormwater runoff through grassy swales, wetland filtration, ex-filtration trenches or other means consistent with the Best Management Practices of the South Florida Water Management District.

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### **Staff Analysis**

The intent of the Land Development Regulation's open space requirement is to provide for the appropriate placement of landscape material to ensure an aesthetically pleasing site and to minimize the amount of impervious surface area allowing for adequate drainage, and stormwater retention. The applicant's request to reduce the minimum open space requirement from thirty (30) percent to 21.4 percent open space on the Ruby Tuesdays parcel, 20 percent on the Westport Plaza parcel exclusive of the outparcel, and 20 percent

on the Westport Plaza outparcel. If granted, the variances would reduce the required amount of open space by one-third. These requests are not in harmony with the intent of the Land Development Regulations.

Staff finds that there are no special circumstances that apply to this development that do not apply elsewhere in this district and that the strict application of the provisions of the Land Development Regulations would not deprive the applicant reasonable use of the land. Evidence of this can be found by looking at the parcels on the western portion of the Westport Business Plat Parcels A & B Plat which have B-2, Community District uses (Family Tribute Center, Ruby Tuesdays and Race Trac Gas Station) which have all been developed with the thirty (30) percent required open space.

Staff finds that the applicants claim of hardship to be self-created. The reduction of open space would be unnecessary if the applicant eliminated the 29,048 square foot commercial outparcel from the site plan.

Staff also finds that the requested variance is not necessary for the reasonable use of the parcel and is therefore not the minimum needed to accomplish this purpose. While a grocery store is needed in the neighborhood, and can be accommodated on the subject site without an open space variance, the site plan proposed by the applicant is creating the need for this variance. This is a viable site that can be developed in a different manor to accommodate the majority of the proposed uses in accordance with the applicable Land Development Regulations without an open space variance.

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### Findings of Fact

#### Variances:

#### **Section 39-40. Considerations for variances. (Broward County Code)**

**The following findings of facts apply to the variance request.**

(1) There are **not** unique and special circumstances or conditions applying to the property in question, or to the intended use of the property, that do not apply generally to other properties in the same district;

*There are no special circumstances which apply to this property. This is a vacant, undeveloped piece of property and the surrounding commercial site plans were able to meet the required 30% open space requirements.*

(2) Any alleged hardship **is** self-created by any person having an interest in the property or is the result of mere disregard for, or ignorance of, the provisions of the code;

*The request is self-created due to the fact that the applicant has a vacant parcel of property and has attempted to place three separate uses upon the parcel. Not all the uses can fit, without the granting of this variance request.*

(3) The strict application of the provisions of the Code would **not** deprive the

**petitioner of reasonable use of the property for which the variance is sought;**

*The requested reduction is to accommodate a retail shopping center, a Publix grocery store, and an outparcel. The removal of the outparcel would result in the applicant not needing this variance.*

**(4) The variance proposed is not the minimum variance which makes possible the reasonable use of the property;**

*The variance is not necessary for the reasonable use of the land, therefore the request is not the minimum variance that will accomplish this purpose.*

**(5) The granting of the variance will not be in harmony with the general intent and purpose of the Code and will not be injurious to the area involved or otherwise detrimental to the public welfare;**

*The intent of the Code is to provide adequate landscape and open space areas and on-site stormwater retention and pervious areas. Therefore, the requested variance is not in harmony with the intent and purpose of the Code.*

**(6) There do not exist changes or changing conditions which make approval of the variance appropriate;**

*There do not exist any changes or changing conditions relative to this site which would make such a variance approval appropriate.*

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**Staff Recommendation**

**Recommendation:** Based upon the above and the finding of facts in the negative, staff recommends **denial**, of petition V 1-2-01.

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**Planning & Zoning Board Recommendation**

Ms. Moore motioned, Vice-Chair Stahl seconded, approval of the variance with the applicant voluntarily agreeing to install Royal Palm trees as a streetscape improvement, with the trees being the same height as was installed on Davie Road (at time of installation), to be placed along Nova Drive on the frontage of the applicant's property from the corner of Davie Road to the most western end of the property, that the trees be spaced the same distance from each other as was done on Davie Road; and that this streetscaping project would be in addition to the landscape plan which had been presented to the Site Plan Committee. (3-1 w/Davis opposed)

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**Exhibits**

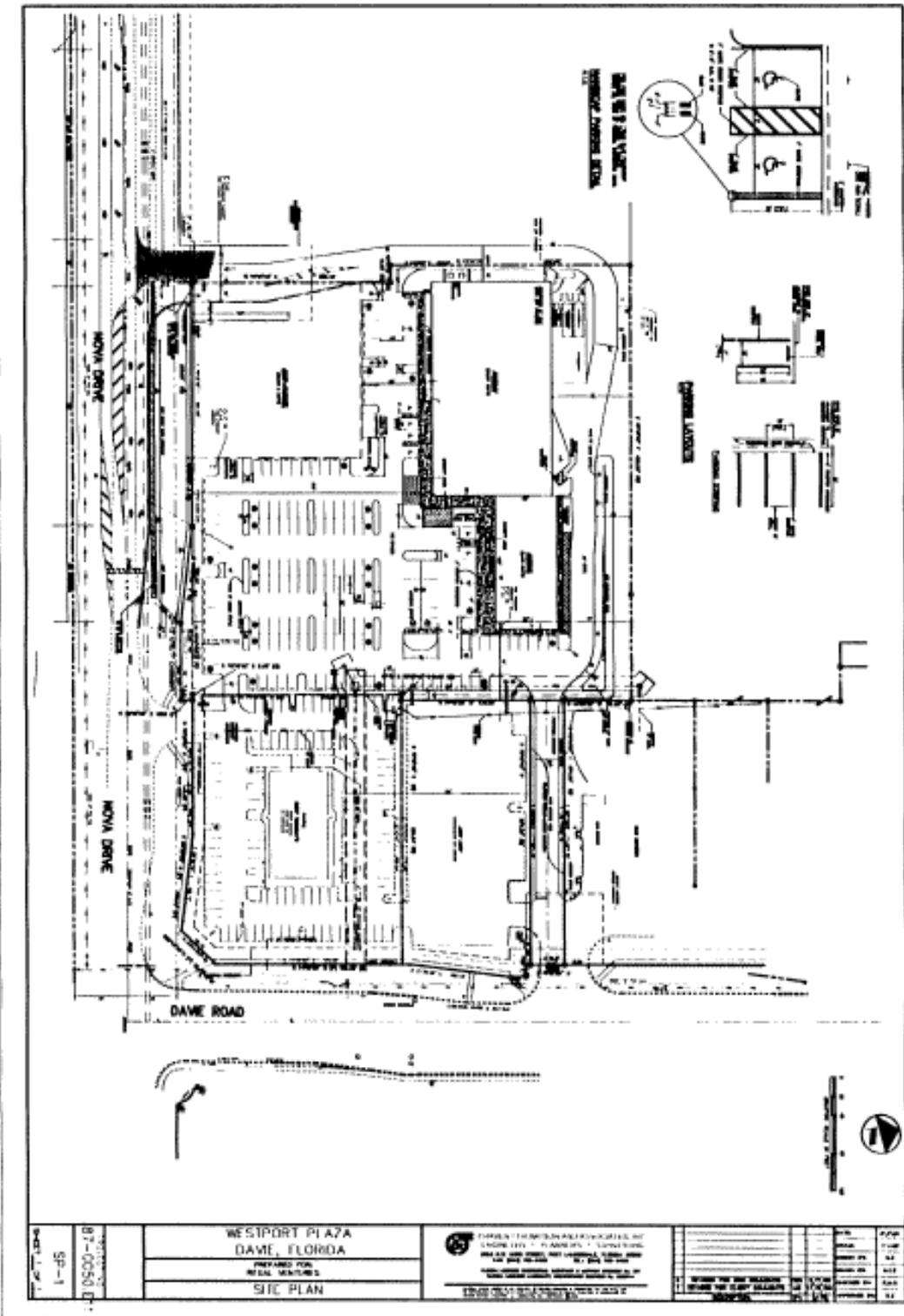
1. Applicant's Justification Statement
2. Land Use Map
3. Subject Site Map

4. Aerial

5. Conceptual Site Plan

Prepared by: \_\_\_\_\_

Reviewed by: \_\_\_\_\_



SP-1  
 87-00560-D  
 1-45

WESTPORT PLAZA  
 DADE, FLORIDA  
 PREPARED FOR  
 REAL SERVICES  
 SITE PLAN

CIVIL ENGINEERING  
 1100 N. W. 10th St.  
 Miami, Florida 33136  
 (305) 375-1100  
 FIDELITY & BOND COMPANY

NO.	DATE	DESCRIPTION	BY	CHKD.
1	11/11/87	PRELIMINARY	...	...
2	11/11/87	...	...	...
3	11/11/87	...	...	...
4	11/11/87	...	...	...
5	11/11/87	...	...	...
6	11/11/87	...	...	...
7	11/11/87	...	...	...
8	11/11/87	...	...	...
9	11/11/87	...	...	...
10	11/11/87	...	...	...

## VARIANCE REQUEST



This variance request is to allow for 21.4 percent open space on the Ruby Tuesdays parcel; 20 percent open space on the Westport Plaza parcel exclusive of the outparcel; and, 20 percent open space on the Westport Plaza outparcel.

### JUSTIFICATION FOR REQUEST

The subject site is composed of three parcels that total approximately 6.268 acres of land. The site lies within the Westport Business Park Parcel A & B Plat, which is immediately west of Davie Road, contiguous to the north side of Nova Drive. The eastern parcel is developed with a Ruby Tuesdays restaurant. The western parcel, which was created through lake fill and is vacant, is proposed to be developed as Westport Plaza, which will contain a retail center that includes a much needed Publix grocery store, as well as an outparcel that will accommodate a future restaurant or other commercial use. The restaurant parcel is included in both the Westport Plaza site plan and this variance request since its site design is being modified on the western edge of the parcel to provide for development of the entire site. The restaurant parcel will provide cross access to Westport Plaza where parking currently exists. In addition, the existing restaurant parcel site plan reflects a strip of open space that existed between its landscape hedge and the former edge of water. This area will be a part of the parking for the overall development.

The subject site is unique in its physical configuration, which resembles an "L" shape; the types of commercial uses it will accommodate; and, the total site design that is created by the already existing restaurant building. As a result, the applicant needs to request this variance to reduce the open space in order to allow for safe and sufficient on-site parking and circulation to serve the current and future uses.

Consideration of a variance request should be made under the three criteria contained in Section 12.309 of the Code. These are discussed below.

*Criterion (a): Whether there are special circumstances applying to the land or building and whether strict application of the Code would create a hardship that is not self-created.*

As noted above, the subject site consists of a total of three parcels that resemble an "L" shape, rather than the more conventional rectilinear shape. As a result of the shape of the parcel, full efficiency in site design cannot be realized. In addition, a portion of the site has already been fully developed as a restaurant use, further decreasing design efficiency, particularly with respect to the relationship of buildings, parking and vehicular drive aisles. Complicating the matter is the fact that the existing and proposed uses on the subject site require more parking than the minimum required. Note that while these uses require more parking, which is being provided, than that required under the applicable land development regulations, the Davie code would require Westport Plaza to provide the same number of spaces that is proposed, indicating that the site is not being "over-parked."

A reduction in open space is necessary to provide the additional parking spaces and related drive aisles necessary to ensure that there is adequate on-site parking and circulation. In turn, this will allow businesses to function successfully, and ensure that residents do not park in the swale area on Nova Drive, thereby creating a danger to themselves and other motorists. The circumstances that create the need for the additional parking, which results in a reduction in open space, are a result of the parcel configuration, existing on-site development, and the parking need generated by the uses. If the

variance for the reduction in open space is not granted, then there will be insufficient parking and circulation. This will create a hardship for the restaurant, grocery store and other retail uses because they will not have sufficient parking for patrons, which would result in a loss of business needed to operate successfully. These circumstances are unique to this parcel of land and are not self-created circumstances.

This variance request meets this criterion.

*Criterion (b): Whether the granting of the variance is necessary for a reasonable use of the land or building and is the minimum necessary.*

The granting of this variance is necessary for a reasonable use of the land and building by providing for safe and adequate parking and circulation through a reduction in the amount of open space. The variance is necessary for the successful function of the restaurant, grocery store and retail. The restaurant, which is an existing use, has already demonstrated a need for the parking. Westport Plaza, which will contain the grocery store, is proposing to provide the number of spaces that extensive market research by Publix has shown to be necessary, and is the number of spaces that the Davie code would otherwise require. The corresponding reduction in open space necessary to provide the parking is the minimum necessary.

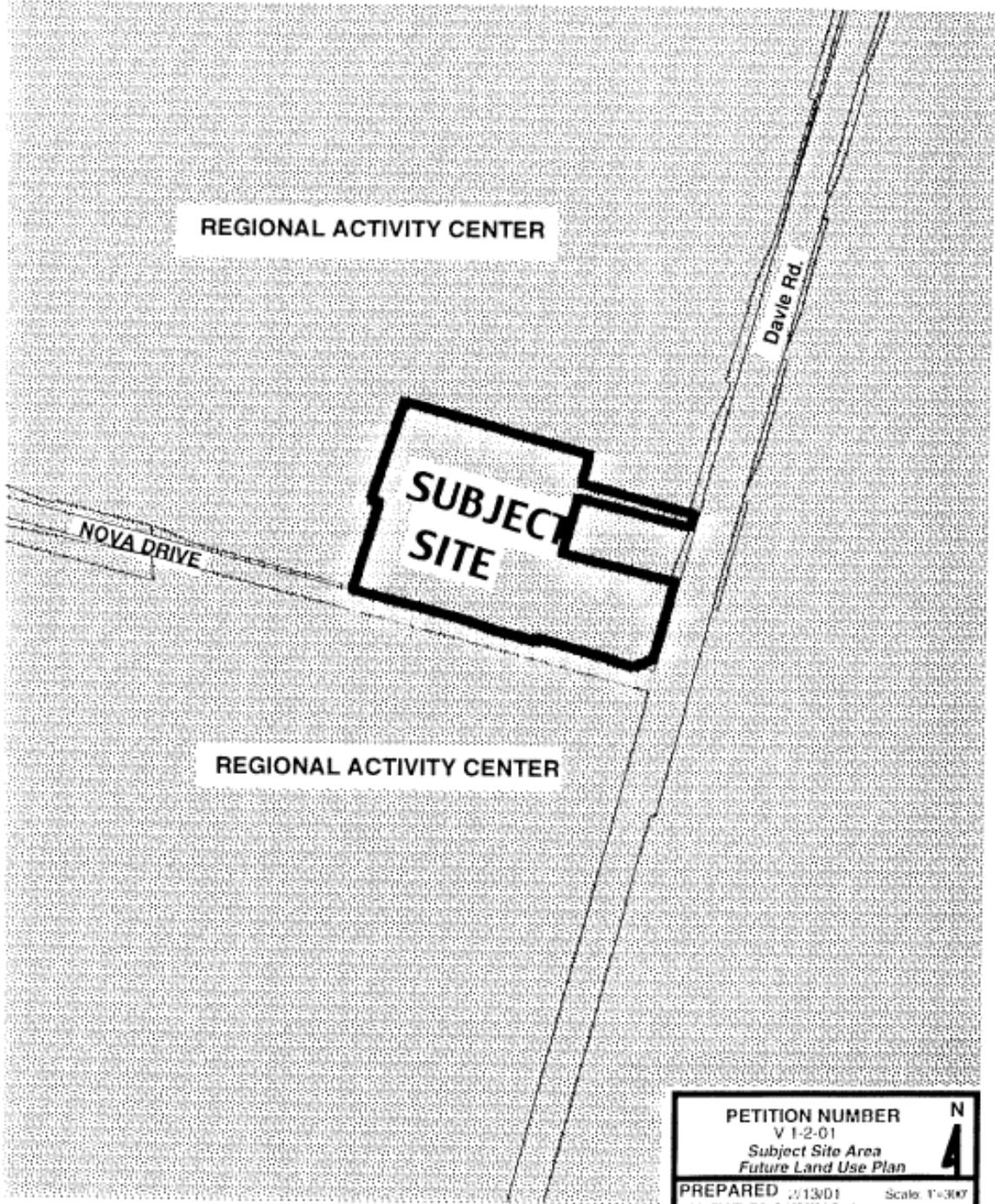
The variance request meets this criterion.

*Criterion (c): Whether the granting of the variance will be in harmony with the intent and purpose of the code and will not be injurious to the neighborhood or detrimental to the public welfare.*

The requested variance for open space will result in a much needed, neighborhood serving development that is attractively landscaped while providing for safe and adequate on-site circulation and parking. As a result, the development will be in harmony with the general intent and purpose of the code. Additionally, a decrease in the open space will have no affect on the neighborhood nor will it be detrimental to the public welfare.

This variance request meets this criterion.

A comparison of this variance request to the criteria contained in the Code of Ordinances shows that the subject request is consistent with Code requirements. As a result, this request merits positive consideration.



REGIONAL ACTIVITY CENTER

**SUBJECT  
SITE**

NOVA DRIVE

Davie Rd

REGIONAL ACTIVITY CENTER

PETITION NUMBER V 1-2-01 Subject Site Area Future Land Use Plan	N 4
PREPARED 2/13/01 BY THE PLANNING & ZONING DIVISION	Scale: 1"=300'



