

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: Ordinance 1st Reading, ZB 3-2-04 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: AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, APPROVING REZONING PETITION ZB 3-2-04, CHANGING THE CLASSIFICATION OF CERTAIN LANDS WITHIN THE TOWN OF DAVIE FROM B-1 NEIGHBORHOOD BUSINESS DISTRICT TO B-2 COMMUNITY BUSINESS DISTRICT; AMENDING THE TOWN ZONING MAP TO COMPLY THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: The request is to rezone 1.252 acres located at the southwest corner of Nova Drive and College Avenue, occupied by a vacant convenience store, canopy, fuel pumps, from: B-1, Neighborhood Business District to: B-2, Community Business District.

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. Since the B-1, Neighborhood Business District zoning does not permit motor fuel pumps; this rezoning request has been made because the applicant wishes to re-establish the use.

Additionally, there is a variance request (V 3-1-04) being processed concurrently for the proposed use of the site. 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 to the north and west, and another lot occupied by a fuel pump is 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. While this is a request for a zoning district that is more intense than the current designation, 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 the 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 with invasive exotic Maleluca trees.

According to the Land Development Code, the parcel meets the minimum requirements for the B-2, Community Business District zoning classification, as the minimum lot size required is 52,500 square feet, and the subject site is 1.252 acres (54,535.56 square feet), minimum frontage and depth is 200', and the subject site has over 200' frontage on College Avenue and a depth of 223'. In conclusion, although the subject site meets the technical requirements to gain the B-2, Community Business District designation, the proposed use 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, Ms. Lee made a motion, seconded by Mr. McLaughlin, to approve subject to deed restrictions which would restrict the site from any other uses except for what the parcel is currently used; hours of operation were limited to 6 a.m. to midnight; the site would be "revamped" to meet current Code; and that no additional variances be requested. (Motion carried 4-1 with Vice-Chair Turin being opposed.) (Ms. Turin stated her reasons for denial include that the intent of the code is to discontinue non-conforming buildings and uses and also she adheres to a strict interpretation on the distance separation due to public safety concerns)

FISCAL IMPACT: None

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

Attachment(s): Ordinance, Planning Report, Justification, Survey, Future Land Use Plan Map, Zoning and Aerial Map

ORDINANCE _____

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, APPROVING REZONING PETITION ZB 3-2-04, CHANGING THE CLASSIFICATION OF CERTAIN LANDS WITHIN THE TOWN OF DAVIE FROM B-1 NEIGHBORHOOD BUSINESS DISTRICT TO B-2, COMMUNITY BUSINESS DISTRICT; AMENDING THE TOWN ZONING MAP TO COMPLY THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Davie authorized the publication of a notice of a public hearing as required by law, that the classification of certain lands within the Town be changed from B-1, Neighborhood Business District to B-2, Community Business District;

WHEREAS, said notice was given and publication made as required by law, and a public hearing there under was held on the date of the adoption of this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE FLORIDA:

SECTION 1. That the property herein after described be and the same is hereby rezoned and changed from B-1, Neighborhood Business District to B-2, Community Business District:

- a. The subject property is described in Exhibit "A", which is attached hereto and made a part hereof;

SECTION 2. That the zoning map heretofore adopted by the Town Council be and the same is hereby amended to show the property described in Section 1, herein, B-2, Community Business District;

SECTION 3. All Ordinances or parts of Ordinances in conflict herewith are to the extent of such conflict hereby repealed.

SECTION 4. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this Ordinance.

SECTION 5. This Ordinance shall take effect immediately upon its passage and adoption.

PASSED ON FIRST READING THIS _____ DAY OF _____, 2004.

PASSED ON SECOND READING THIS _____ DAY OF _____, 2004.

ATTEST:

MAYOR/COUNCILMEMBER

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2004.

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 with conditions on May 12, 2004.

Application Request: Rezone the 1.252 acres subject site **FROM:** B-1, Neighborhood Business District; **TO:** B-2, Community Business District.

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 Uses:</u>	<u>Surrounding Future Land Use Plan Map Designations:</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

§12-24 (J) (4) of the Land Development Code, Neighborhood Business (B-1) District. The B-1 District is intended to implement the commercial designation of the Town of Davie Comprehensive Plan by providing for a business area to service the local neighborhood shopping and personal service needs of a limited surrounding residential area. Retail stores

permitted herein are intended to include mainly convenience goods which are usually a daily necessity for a residential neighborhood.

§12-24 (J) (5) of the Land Development Code, Community Business (B-2) District. The B-2 District is intended to implement the commercial designation of the Town of Davie Comprehensive Plan by providing for a business area to service the shopping and limited service needs of several neighborhoods or the local community. Retail stores are intended to include convenience, fashion and durable goods.

§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.

§12-307 of the Land Development Code, review for rezonings; criterion in the Findings of Fact.

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 17-2: No property within the Town shall be rezoned to a zoning district that is not in compliance with the Davie Future Land Use Plan.

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

The request is to rezone 1.252 acres located at the southwest corner of Nova Drive and College Avenue, occupied by a vacant convenience store, canopy, fuel pumps, from: B-1, Neighborhood Business District to: B-2, Community Business District.

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. Since the B-1, Neighborhood Business District zoning does not permit motor fuel pumps; this rezoning request has been made because the applicant wishes to re-establish the use.

Additionally, there is a variance request (V 3-1-04) being processed concurrently for the proposed use of the site. 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 to the north and west, and another lot occupied by a fuel pump is 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. While this is a request for a zoning district that is more

intense than the current designation, 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 the 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 with invasive exotic Maleluca trees.

According to the Land Development Code, the parcel meets the minimum requirements for the B-2, Community Business District zoning classification, as the minimum lot size required is 52,500 square feet, and the subject site is 1.252 acres (54,535.56 square feet), minimum frontage and depth is 200', and the subject site has over 200' frontage on College Avenue and a depth of 223'. In conclusion, although the subject site meets the technical requirements to gain the B-2, Community Business District designation, the proposed use does not further the intent of the Regional Activity Center as required by the Comprehensive Plan.

Findings of Fact

Rezoning:

Section 12-307(A) (1):

The following findings of facts apply to the rezoning request:

- (a) The proposed change is contrary to the adopted comprehensive plan, as amended, or any element or portion thereof;

The Future Land Use Plan Map designates the parcel as Regional Activity Center, and the comprehensive plan requires that rezoning requests for parcels located within the RAC be evaluated against the comprehensive plan policies relating to the RAC designation, and shall further the intent of the RAC. The following is the evaluation against the applicable Comprehensive Plan policies.

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 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. While this is a request for a zoning district that is more intense than the current designation, 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 and needs of students, residents, employees and visitors to the South Florida Education Center. The development potential of the 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.

- (b) The proposed change will not create an isolated zoning district unrelated and incompatible with adjacent and nearby districts;

Designating the site B-2, Community Business District for the purpose of allowing the motor fuel pumps to be operated is incompatible with adjacent residential districts as the Land Development Code requires 250' separation requirement from a residential use or another lot occupied by a motor fuel pump.

- (c) Existing zoning district boundaries are logically drawn in relation to existing conditions on the property proposed for change;

The existing B-1, Neighborhood Business District boundaries are logical and the site can support a use allowed by this designation.

- (d) The proposed change may adversely affect living conditions in the neighborhood;

Designating the site B-2, Community Business District may adversely affect the neighborhood because this use is closer to a residential use than the Land Development Code allows and requires a variance to be granted.

- (e) The proposed change will not create or excessively increase automobile and vehicular traffic congestion above that which would be anticipated with permitted intensities or densities of the underlying land use plan designation, or otherwise affect public safety;

Change the parcel's zoning to B-2, Community Business District will not generate more traffic than what is anticipated with the RAC designation.

- (f) The proposed change may adversely affect other property values;

The value of the adjacent property to the west may be diminished by rezoning this site to B-2, Community Business District because one of the allowed uses, a convenience store will be illogical to place on this property.

- (g) The proposed change may be a deterrent to the improvement or development of other property in accord with existing regulations;

Designating the site B-2, Community Business District may deter the adjacent property to the west from being improved or developed since one of the allowed uses, a convenience store, will be illogical to place on this property. In addition, the re-establishment of the motor fuel pumps will minimize the value of the gas station across the street.

(h) The proposed change does constitute a grant of special privilege to an individual owner as contrasted with the welfare of the general public;

While a rezoning request may be considered for any parcel that meets the Land Development Code's minimum requirements, approval of the request would place the owner's business desires above the welfare of the general public. The public's welfare would be benefited by placing a use permitted by the B-1, Neighborhood Business District designation and the intent of the Code is to protect and promote the general welfare of the public.

(i) There are not substantial reasons why the property cannot be used in accord with existing zoning.

The site can support many uses allowed by the existing B-1, Neighborhood Business District designation.

(j) The proposed zoning designation is not the most appropriate designation to enhance the Town's tax base given the site's location relative to the pattern of land use designations established on the future land use plan map, appropriate land use planning practice, and comprehensive plan policies directing land use location.

Designating the site B-2, Community Business District to allow a convenience store, canopy, and 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. A variance is required for the use because it is closer to residential uses than the Land Development Code allows. 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 rezoning to a district more intense than the existing designation 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.

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

At the may 12, 2004, Planning and Zoning Board meeting, Ms. Lee made a motion, seconded by Mr. McLaughlin, to approve subject to deed restrictions which would restrict the site from any other uses except for what the parcel is currently used; hours of operation were limited to 6 a.m. to midnight; the site would be “revamped” to meet current Code; and that no additional variances be requested. (Motion carried 4-1 with Vice-Chair Turin being opposed.) (Ms. Turin stated her reasons for denial include that the intent of the code is to discontinue non-conforming buildings and uses and also she adheres to a strict interpretation on the distance separation due to public safety concerns)

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 REZONING 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.

In any event, a review of the rezoning request should include a consideration of the criteria listed in Section 12-307(A)(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.

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

Criterion (a): Whether the proposed change is contrary to the adopted comprehensive plan, as amended, or any element or portion thereof.

The Future Land Use Plan Map designates the parcel as Regional Activity Center (RAC). The area falls in Planning Area 5 and Flexibility Zone 99. This planning area includes all of the South Florida Education Center complex as well as a number of industrial uses and the moderately dense residential communities along Nova Drive. Objective 11 of the Future Land Use Plan addresses the Regional Activity Center where the subject site is located and states that RAC land use categories "shall permit the mixing of non-residential activities". Policy 11-4 states that the Regional Activity Center category "shall promote and encourage large-scale development that facilitates a coordinated residential, employment, shopping and recreational environment." Obviously, the service station and convenience store were originally constructed with the idea of serving the South Florida Education Center which it abuts and the large-scale development in the area. Although an apartment complex has been constructed immediately across the street from the existing service station, the Town of Davie Comprehensive Plan contemplates in this planning area the mixture of moderately dense residential with large-scale development, and commercial and industrial uses. Certainly, a service station and convenience store is compatible with a college level educational complex, commercial and industrial development, and moderately dense residential development.

As a result, the rezoning request is consistent with the adopted comprehensive plan.

Criterion (b): Whether the proposed change would create an isolated zoning district unrelated and incompatible with adjacent and nearby zoning districts.

The requested zoning change from B-1 to B-2 is a relatively minor change as opposed to changing agricultural lands to commercial or residential. The B-2 zoning is compatible with the medium/high density residential directly to the north and west, and the industrial classifications to the northwest. It also provides a

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

transition with the community facility districts to the immediate east and south. The vacant parcel immediately to the west of the subject site is zoned B-1 and it was originally envisioned to be the location for a Farm Store drive-thru facility. Any specific issues regarding the change from B-1 to B-2 could be addressed through a declaration of restrictions placed on the land to ensure that no future development utilizes more undesirable uses from the B-2 zoning designation.

As a result, the requested rezoning positively satisfies this criterion.

Criterion (c): Whether existing zoning districts are illogically drawn in relation to existing conditions on the property proposed for change.

The existing B-1 zoning district was logically drawn at the time of its creation, since it was apparently intended to accommodate a proposed Farm Store immediately next door to this site that has never actually been constructed. When the service station and convenience store in question were built, however, the property was in unincorporated Broward County and not subject to the Town of Davie's zoning code. The requirement that service stations be located only in B-2 zoning districts was enacted after the station was already in existence and had been annexed into the Town of Davie. The proposed rezoning is only to bring the existing structure into compliance with the Town's Code and is not a significant change in the zoning classification.

As a result, the proposed rezoning satisfies this criterion.

Criterion (d): Whether the proposed change will adversely affect living conditions in the neighborhood.

The proposed change from B-1 to B-2 will have absolutely no effect on living conditions in the neighborhood. First, this is apparent since the station has been in existence since the 1980s with no claim of any adverse circumstances on the neighborhood. Second, it is believed that the residents of the Nova Drive area desire to

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

have the station reopened as a convenience to them and to serve their needs. The service station will be upgraded significantly and extensive landscaping in excess of that required by the Code is being proposed. As a result, the reopening of the service station and convenience store should be an asset to the area.

As a result, the requested rezoning satisfies this criterion.

Criterion (e): Whether the proposed change will create or excessively increase automobile and vehicular traffic congestion above that which would be anticipated with permitted intensities or densities of the underlying land use plan designation, or otherwise affect public safety.

The current land use designation for this site is Regional Activity Center, which contemplates large-scale development, which obviously would result in a great deal of traffic. Clearly, the service station was originally placed in this location to serve that already existing traffic and is not the type of facility that would cause customers to drive across town and, thus, increase vehicular trips or roadway congestion. Certainly, the service station has been closed for several months and there has been no decrease in the traffic on either Nova Drive or College Avenue as a result of its closure. As a convenience store, it is believed that customers do not make special trips to go to the store, but rather utilize it only as a convenience when going to and from other destinations.

As a result, the proposed rezoning satisfies this criterion.

Criterion (f): Whether the proposed change will adversely affect other property values.

Considering that the service station and convenience store were in existence before most of the surrounding properties and its existence was not a deterrent to their construction, it is believed that the reopening of the service station and convenience store should have absolutely no effect whatsoever on surrounding property values. The convenience store portion alone could reopen without the rezoning, so obviously that use is contemplated at that location.

Applicant: B&R Real Estate Services, LLC
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As a result, the proposed rezoning satisfies this criterion.

Criterion (g): Whether the proposed change will be a deterrent to the improvement or development of other property in accord with the existing regulations.

Virtually all of the land in the surrounding areas has already been developed and most of that development is newer than the existing service station and convenience store. As a result, the reopening of the service station and convenience store should have absolutely no adverse effect on the development of other property in accord with the existing regulations.

As a result, the requested rezoning satisfies this criterion.

Criterion (h): Whether the proposed change will constitute a grant of special privilege to an individual owner as contrasted with the welfare of the general public.

The proposed change does not constitute a grant of special privilege to an individual owner, since the use of the property existed prior to the application of the zoning code to the property. The proposed rezoning is nothing more than a accommodation so that the use is no longer a nonconforming use.

As a result, the requested rezoning satisfies this criterion.

Criterion (i): There are substantial reasons why the property cannot be used in accord with existing zoning.

The convenience store portion of the site is allowed under B-1 zoning. The store, however, is nothing more than a kiosk type which could not survive solely as a convenience store. In order to erect a convenience store, the entire existing store and service station would have to be demolished and a convenience store reconstructed. The property was originally conceived as a service station and the convenience store was merely an ancillary use, literally as a convenience to gasoline customers. The site is a logical location for a service station and is a relatively small

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site that could not be used for any significant redevelopment without acquiring surrounding properties. Since the service station was constructed and approved prior to the zoning change, then the only logical use of the property is continuing the service station operation.

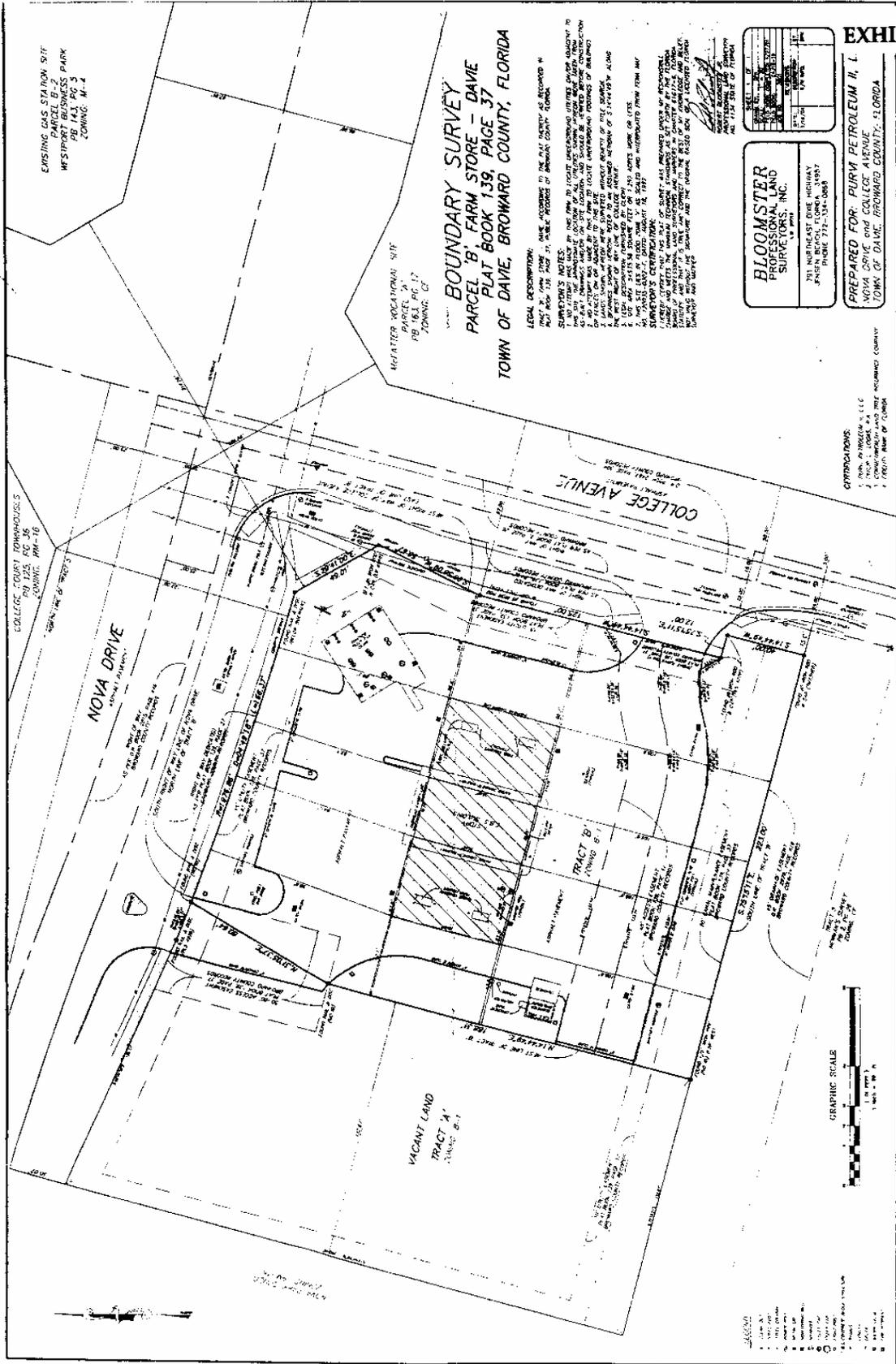
As a result, the requested rezoning satisfies this criterion.

Criterion (j): Whether the proposed zoning designation is the most appropriate designation to enhance the Town's tax base given the site location relative to the pattern of land use designations established on the Future Land Use Plan Map, appropriate land use planning practice, and comprehensive plan policies directing land use location.

The use of the property as commercial certainly enhances the Town's tax base. By combining the service station and convenience store uses into a relatively small site, the Town's tax base is maximized as compared to the surrounding community facility and residential districts. Since the service station is preexisting to the application of the Town's zoning code, it is most appropriate to apply the appropriate zoning classification to accommodate the preexisting use.

As a result the requested rezoning satisfies this criterion.

As has been demonstrated, the requested rezoning from B-1 to B-2 is consistent with the adopted Town of Davie Comprehensive Plan, the Town's Future Land Use Plan Map, and meets all the criteria contained in the Land Development Code. As a result, this rezoning request merits favorable consideration.



EXISTING GAS STATION SIF
 PARCEL B-2
 WESTPARK BUSINESS PARK
 ZONING: M-2

AGRIATER VOCATIONAL SIF
 PARCEL A
 PG 18.1 PG 17
 ZONING: CF

BOUNDARY SURVEY
PARCEL 'B' FARM STORE - DAVE
 PLAT BOOK 138, PAGE 37
 TOWN OF DAVIE, BROWARD COUNTY, FLORIDA

LEGAL DESCRIPTION: THE SUT PLACE AS SHOWN IN PLAT BOOK 138, PAGE 37, PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

SURVEYOR'S NOTES: THIS SURVEY WAS MADE IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 173, F.S., AND THE RULES OF PROFESSIONAL CONDUCT FOR SURVEYORS AS ADOPTED BY THE BOARD OF PROFESSIONAL REGULATION OF THE STATE OF FLORIDA. THE SURVEY WAS MADE IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 173, F.S., AND THE RULES OF PROFESSIONAL CONDUCT FOR SURVEYORS AS ADOPTED BY THE BOARD OF PROFESSIONAL REGULATION OF THE STATE OF FLORIDA. THE SURVEY WAS MADE IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 173, F.S., AND THE RULES OF PROFESSIONAL CONDUCT FOR SURVEYORS AS ADOPTED BY THE BOARD OF PROFESSIONAL REGULATION OF THE STATE OF FLORIDA.

BLOOMSTER
ENGINEERING AND
SURVEYING, INC.
 201 N. W. 10th Street
 Ft. Lauderdale, FL 33304
 PHONE: 772-772-1500

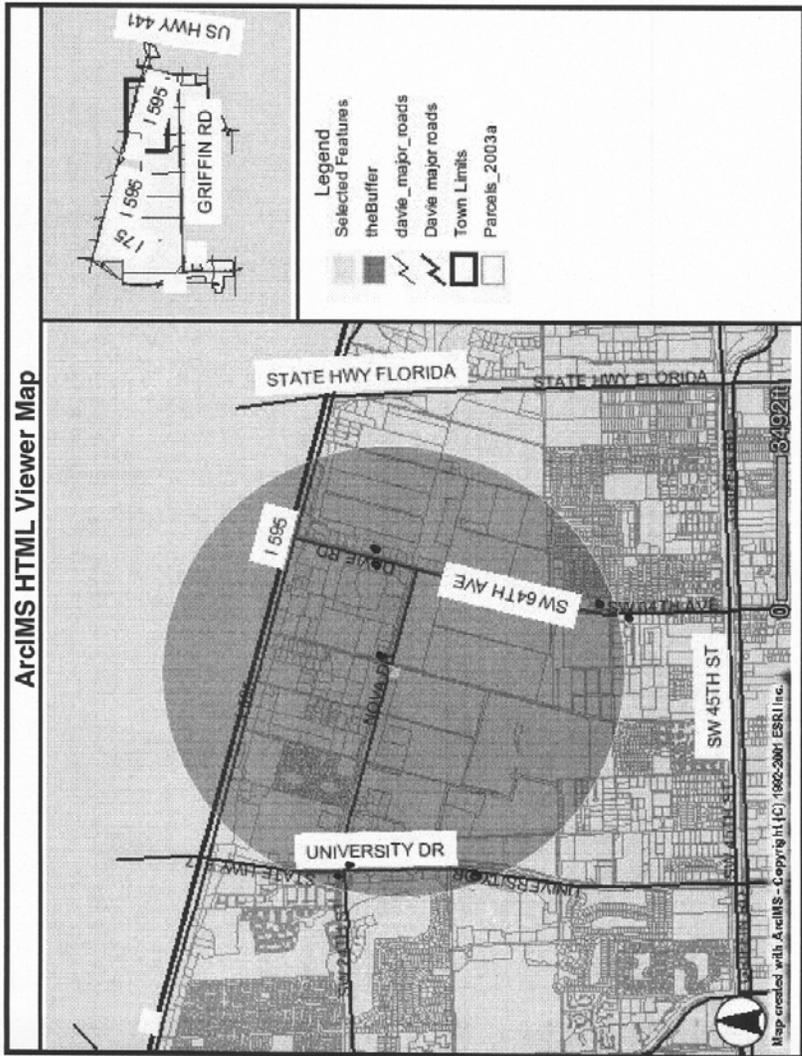
PREPARED FOR: PURM PETROLEUM II, L.
 NOVA DRIVE and COLLEC ALPINE
 TOWN OF DAVE, BROWARD COUNTY, FLORIDA

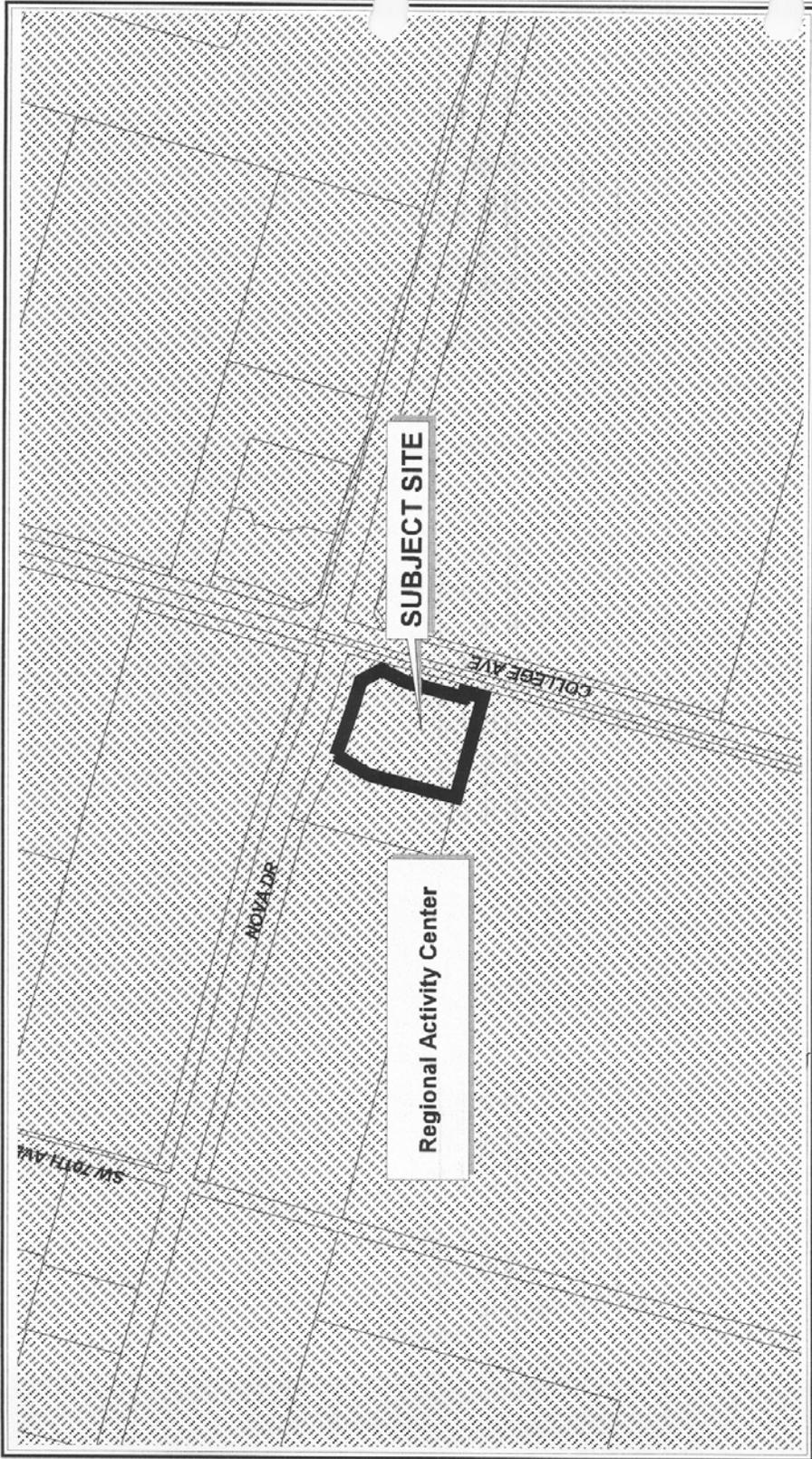
CONTRIBUTORS:
 1. PURM PETROLEUM II, L.L.C.
 2. PURM, JOSE, P.A.
 3. TOWN OF DAVE, BROWARD COUNTY

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

**Tom Thumb Nova Drive
Shell Nova Drive
Mobile Nova Drive**

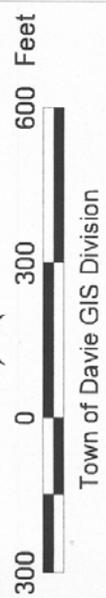
**Hess Davie Road
Racetrac Davie Road
Mobile Davie Road
Texaco Davie Road**

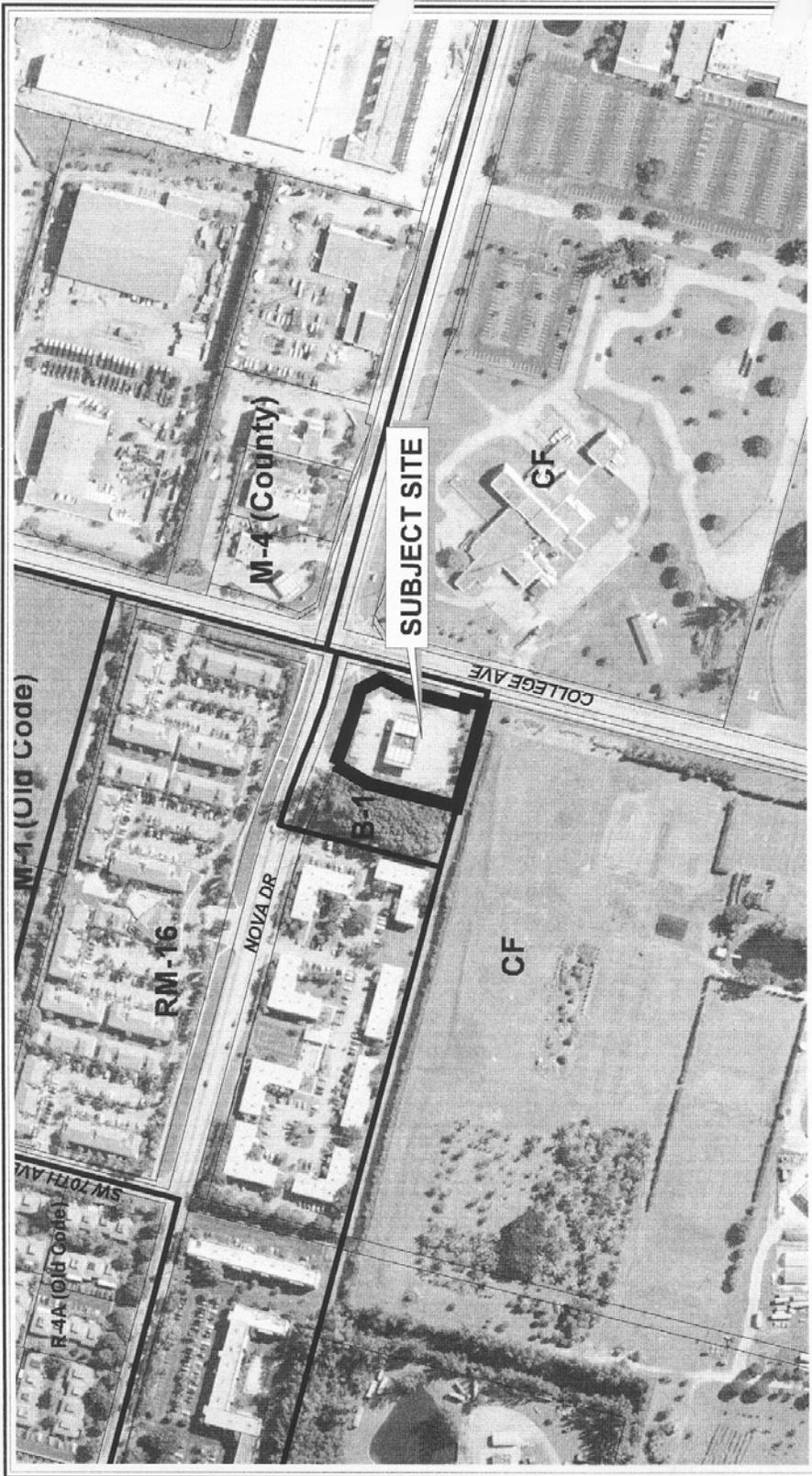




**REZONING
ZB 3-2-04
Future Land Use Map**

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





**REZONING
ZB 3-2-04
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