



A G E N D A

ORMOND BEACH PLANNING BOARD

Regular Meeting

May 13, 2010

7:00 PM

City Commission Chambers
22 South Beach Street
Ormond Beach, FL

PURSUANT TO SECTION 286.0105, FLORIDA STATUTES, IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE PLANNING BOARD WITH RESPECT TO ANY MATTER CONSIDERED AT THIS PUBLIC MEETING, THAT PERSON WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSE, SAID PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, INCLUDING THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

PERSONS WITH A DISABILITY, SUCH AS A VISION, HEARING OR SPEECH IMPAIRMENT, OR PERSONS NEEDING OTHER TYPES OF ASSISTANCE, AND WHO WISH TO ATTEND CITY COMMISSION MEETINGS OR ANY OTHER BOARD OR COMMITTEE MEETING MAY CONTACT THE CITY CLERK IN WRITING, OR MAY CALL 677-0311 FOR INFORMATION REGARDING AVAILABLE AIDS AND SERVICES.

- I. ROLL CALL**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. NOTICE REGARDING ADJOURNMENT**

THE PLANNING BOARD WILL NOT HEAR NEW ITEMS AFTER 10:00 PM UNLESS AUTHORIZED BY A MAJORITY VOTE OF THE BOARD MEMBERS PRESENT. ITEMS WHICH HAVE NOT BEEN HEARD BEFORE 10:00 PM MAY BE CONTINUED TO THE FOLLOWING THURSDAY OR TO THE NEXT REGULAR MEETING, AS DETERMINED BY AFFIRMATIVE VOTE OF THE MAJORITY OF THE BOARD MEMBERS PRESENT (PER PLANNING BOARD RULES OF PROCEDURE, SECTION 2.7).

- V. APPROVAL OF THE MINUTES**
 - A. April 8, 2010**
- VI. PLANNING DIRECTOR'S REPORT**
- VII. PUBLIC HEARINGS**

A. PBD Amendment 10-95: 500 West Granada Boulevard, Ormond Park Plaza

This is a request by Dr. Melchor Gonzalez, M.D., Manager of M & Y Properties LLC, for approval of a Planned Business Development amendment for the existing project at 500 West Granada Boulevard to:

1. Incorporate the uses of the B-9 (Boulevard) zoning district; and
2. Allow as a retail use, wine store to include wine and beer for off-premise consumption and wine and beer for on premise consumption so long as the floor area dedicated to the on-premise consumption shall not exceed more than 25% of the gross leasable floor area; and
3. To eliminate an existing condition in the existing Development Order limiting restaurants to a maximum of 15 seats per unit.

There are no site or building improvements proposed with the current application.

B. SE 10-100: Special Exception: Murals at 45-49 West Granada Boulevard, Caffeine's

This is a request for a Special Exception by Dorian Burt, authorized agent of the property owner, Highlander Corporation, to allow the existing murals painted on the northern and western walls of the building to remain. There are no other building or site improvements proposed with this application.

VIII. OTHER BUSINESS

IX. MEMBER COMMENTS

X. ADJOURNMENT

M I N U T E S
ORMOND BEACH PLANNING BOARD
Regular Meeting

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I. ROLL CALL

Members Present

John Adams
Patricia Behnke
Al Jorczak
Patrick Opalewski
Rita Press
Doug Thomas

Staff Present

Randal Hayes, City Attorney
Ric Goss, AICP, Planning Director
Steven S. Spraker, AICP, Senior Planner
Chris Jarrell, Recording Technician

Members Excused

Doug Wigley

II. INVOCATION

Rita Press led the invocation.

III. PLEDGE OF ALLEGIANCE

IV. NOTICE REGARDING ADJOURNMENT

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V. APPROVAL OF THE MINUTES

The minutes of the February 11, 2010 Planning Board meeting were unanimously approved, as presented.

VI. PLANNING DIRECTOR'S REPORT

Mr. Goss advised the Board that staff had received the ORC (Objections, Recommendations and Comments) report for the comprehensive plan amendments from the Florida Department of Community Affairs (DCA). He reported that there were nine (9) objections, seven of which were easily addressed, and two that dealt with the multi-modal strategy (MMS). He said that DCA had wanted more information regarding the City's multi-modal strategy; therefore, staff had compiled the memos and other backup documentation into a report and forwarded it to them. He pointed out that the document was quite large, but could be accessed through the city's new website beginning the next day. He added that staff could provide a hard copy to anyone who wanted one.

VII. PUBLIC HEARINGS

A. SE 10-40: Prince of Peace Social Services Building Special Exception

Mr. Spraker stated that the application was for a Special Exception for the Prince of Peace church located on South Nova Road. He pointed out that the property wrapped around the Wellington Station condominium property and also had frontage on Hand Avenue. He said that the proposed, approximately 12,400 square-foot building would be located just west of Wellington Station and would house a variety of uses in addition to the thrift store, which would occupy about 4,400 square feet. He pointed out a meeting area, social services offices and pantry, and a small chapel were planned and noted that the storage room, stock room and loading dock would be buffered by the building from Wellington Station.

Mr. Spraker said that the project's stormwater system would be located on the west side of the subject project, adjacent to the Volusia County stormwater system. He added that the perimeter of the property would be landscaped, as would the 30-foot building setback area. He said that a 36-foot landscape buffer would also be provided along the Hand Avenue frontage and PVC vinyl fencing would separate the subject property from Wellington Station. He noted that water and sewer service would be provided by the city of Daytona Beach.

The applicants are required to go through the public hearing, Special Exception process because they are a house of worship in a residentially zoned area and are expanding their use, explained Mr. Spraker. He said that the proposal met all the Land Development Code requirements for

setbacks, buffering, landscaping, and stormwater, and were complying with the Mediterranean architectural style. He referenced the landscape plan included in the Board packet and stated that the applicants were attempting to retain the existing vegetation and to enhance it by filling in any gaps in that vegetation.

Mr. Spraker informed the Board that the applicants held a community meeting in February, at which they noticed the residents and responded to questions and concerns. He noted that the staff report included questions raised and the responses given at that meeting. He said that the Wellington Station Homeowner's Association president had expressed concern that every individual property owner had not received notice of the community meeting (not required by the city's Code); therefore, staff had given notice of the public hearing to each individual unit. He said that the one response received had been included in the Board packet. Mr. Spraker advised that staff was recommending approval of the application.

Ms. Kimberly Buck, Alann Engineering Group, 880 Airport Road, Suite 113, stated that she thought the concerns of the residents had been addressed. She noted that they had expressed concern with the source of water for the Prince of Peace church addition (the original plans were for the water to come off of Wellington Station), but after finding that Wellington Station had a private system, the plans were revised to tie in to water from the city of Daytona Beach on the south side of Hand Avenue. She said that another concern was whether or not the PVC fencing would extend the entire length of the property line on the east side of the proposed project and confirmed that it would. Ms. Buck also pointed out that the proposal would maintain as much of the existing vegetation as possible and would add to that vegetation to create a sufficient buffer; she said that they would also improve the area in front of the existing retention pond.

Mrs. Press commended the planning director for championing the effort to meet with residents and to address their concerns so that any issues could be resolved prior to the projects being heard by the Board. She thought it worked well.

Chair Thomas opened the meeting to public comment.

Mr. George Adams, president of the Wellington Station condominium association, said that theirs was a small community of 72, mostly older, families. He said that through the years their community had been plagued with vandalism created by people trespassing through the adjacent property and felt that the project would bring in more people utilizing the bus stop that was in front of the Wellington Station property, not the church property. He said that to no avail, they had constantly pled with the church regarding the problems they had, particularly with the annual Octoberfest festival which every year created problems with noise from their huge generators, merry-go-rounds, ferris wheels, etc., within 50 feet of their homes. He also expressed the community concern that one of residents had gotten ill from the fumes produced by one of the generators during the event; they felt that it could have been avoided.

Mr. Adams said that the subject site had long been home to nests of gopher turtles, a protected species in the state of Florida, and that it was an issue that had to be resolved prior to construction. He reminded the applicants that at the community meeting they were promised a more detailed drawing of the landscaping improvements, but had not yet seen one. In addition, he said that a section of fencing was shown on the plans to be replaced with white plastic PVC

fence and questioned who authorized the applicants to remove the fence, which he said was on Wellington Station condominium property. He reiterated the residents' concerns with their safety and the safety of their property.

Ms. Kathryn Feckley, Wellington Station, stated that their apartment would face the proposed building, which would replace their view of the trees. She also expressed concern for the turtles and their habitat.

In response to Chair Thomas, City Attorney Hayes confirmed that legislation regarding the gopher tortoises had been amended a few years earlier to require relocation of the turtles, rather than simply capping the nests, which resulted in the deaths of the turtles.

Mr. Spraker explained that the applications were required to obtain State permits for stormwater and environmental protection prior to any site construction. He offered to provide Ms. Feckley with copies of all correspondence between the applicants and the Department of Environmental Regulation related to the turtles.

Mrs. Betty Weite, 10 Curve Creek Way, said she and her husband volunteered at the Prince of Peace social services offices. She opined that the new improvements would eliminate the ability of people to congregate at night in the now-unkept wooded area to the west of Wellington Station. She felt that the people creating the problems at that residential complex were not among those approximately 1,000 currently being served by the church, many of whom were unemployed and needed assistance with food or utility payments. She advised that their social service clients were good families who needed a little help during hard times. She clarified for Mrs. Feckley that she did not intend to imply that their property valuations would increase with the addition of the church improvements to the west.

Mr. Jorzak asked Mr. Spraker to address the comment made by Mr. George Adams that a section of the Wellington Station fencing was shown to be replaced on their property.

Mr. Spraker replied that the survey showed it to be on the church property. He said that if turned out on that the fencing was on the Wellington Station property, the church could simply leave the chain link fence intact and install the PVC vinyl fencing next to it. He clarified for Chair Thomas that the fencing had not yet been removed.

Mr. Jorzak said that the landscaping plan appeared to indicate a good amount of landscape screening of the parking area from Hand Avenue and asked if that landscaping exceeded the basic Code requirements for screening.

Mr. Spraker confirmed that the landscaping on both sides of the parking lot exceeded the Code requirements.

Mrs. Press thought that if the building was adequately landscaped with new, attractive shrubbery the view from the Wellington Station condominiums facing the Prince of Peace facility would be fine. She also suggested that, at the time of permitting for the Octoberfest event, the residents could request that the generator be relocated away from their complex.

Mrs. Behnke asked the church personnel if there were any plans for any additional festivals to be held on the church area that was not currently used for those events. She said that her question was to address the letter written to the Board by someone concerned with additional noise and activities.

Father Bill Zamborsky, 600 South Nova Road, said that other than Octoberfest, they had nothing in mind. He said that the church occasionally participated in other community activities and that they had some complaints with their annual participation in the Cancer Walk for Life, an all-night event. He reiterated that they had no plans for additional events, but said that they were open to other activities of a civic nature.

Mrs. Behnke felt that the residents should not have to endure anything more than they already did.

Chair Thomas pointed out that the Prince of Peace had held the annual Octoberfest event since the 1970's or 1980's. He also pointed out that a drive-in movie theatre had formerly been located at the southwest corner of Nova Road and Hand Avenue, across the street from Wellington Station. He recalled people living in The Trails complaining about the existence of a dump at that location, noting that the dump had existed long before there was The Trails subdivision.

The board voted to close the public hearing.

Mr. Adams made a motion to approve SE 10-40.

Mr. Opalewski seconded the motion.

The motion was approved by unanimous vote.

B. SE 10-41: Miro Medical Wall Waiver Special Exception

Mr. Spraker said that the item was a request for a wall waiver at the Miro Medical Center, 150 Sage Brush Trail, located south of State Road 40 across from the Trails South Forty and west of the shopping center at Clyde Morris Boulevard.

Mr. Spraker explained that the city's Land Development Code requires a buffer wall for projects abutting residential areas and said that the subject property abuts residential along the stormwater retention pond at the rear of the site and at the southwest along the border with a two-unit townhome at 200-202 Sage Brush Trail. He said that the site was platted as part of the overall Trails South Forty development, a development of both office and multi-family residential uses. On an aerial, he noted a 15-foot drainage easement along the rear of the property and a common area around the property, and pointed out an existing sidewalk that cuts through the applicant's property at the southwest rear corner, which he said the applicant plans to leave as is.

Mr. Spraker stressed that the application was solely for the wall waiver. He recalled that at the time the development was approved, there was a 10,000 square-foot threshold; since the proposed building was only 6,400 square feet, no public hearing was required and the project

was approved through the Site Plan Review Committee. He said that the applicant was now seeking waiver of the wall requirement.

A community meeting was held on March 1st, Mr. Spraker said, which was well attended by about 50 people, both residents of the Trails South Forty, as well as other area property owners. He reported that the applicant had presented their plan, discussed why they wanted to pursue the wall waiver and had outlined the available options. He explained that the Code requires a wall along the rear and west, and wanted instead to replace the wall with landscaping along the stormwater retention pond and along the side of the site. He said that the landscaping was proposed be a double hedge row of 7-gallon plants (about three feet) installed (Option 1).

Mr. Spraker said that at the beginning of the community meeting, those present preferred the wall to the landscaping, but that following the presentation and discussion, all but one person voted to allow the landscape buffer in lieu of the wall. He pointed out a letter in the Board packet from Mrs. Peters, the adjacent property owner, who stated that the wall or some type of buffer should be required. He said that what he felt had not been made clear at the community meeting was that the plants that would be three feet (3') when installed, would grow to five to six feet (5-6') within a year to 18 months. He explained to the Board that if they chose to allow the landscaping, they could require larger plant material at installation. He said that they could also choose to have a single hedge row instead of a double hedge.

Mr. Spraker also pointed out that the city's landscape architect had provided an opinion, which had also been included in the Board packet. He said that Mr. MacDonald had noted that the landscape hedge would not only grow taller than a wall, but also had the ability to grow thicker. He felt they were good materials and that the question was only the size at installation.

Mr. Spraker said that a third option discussed briefly at the community meeting was for a PVC fence along the side. He said that staff had no objection to the wall waiver along the rear along the retention pond and within a drainage easement, since structures were not typically allowed in drainage easements and were typical amenities to projects. He reiterated that staff had no objection to the wall waiver and that those at the community meeting expressed the desire for the landscaping in lieu of the wall.

Chair Thomas questioned how the sidewalk could have been built on private property and asked if the property owner had provided a waiver to allow it.

Mr. Spraker surmised that it was probably because it was so close to the retention pond, but said that there was no record of an easement. Although he did not know why there was no easement, he thought that the HOA and the property owner could negotiate an easement so that there was legal documentation allowing the sidewalk and protecting the property owner from liability from people crossing his property.

City Attorney Hayes confirmed for Chair Thomas that there were potential legal issues regarding use of someone's property over time.

Mr. Spraker confirmed for Mr. Opalewski said that the option voted on by the HOA was for the plant material stated in Option 2. He added for Mr. Adams that the HOA minutes from the

community meeting reinforced that overall, the residents favored the wall waiver, and that the letter was provided after the Board packet was sent out. He also assured Mrs. Press that the landscaping plan included an irrigation system.

Mrs. Press questioned the cost of a wall, saying that when granting wall waivers, there should be a commensurate amount of landscaping for screening. She also questioned whether the applicant would be removing a lot of the large trees on the site.

Mr. Spraker surmised that the wall cost would most likely be about \$150 per linear foot, or in the case of the subject property, about \$40,000 to \$45,000. He said that the trees in the common area would remain and that pine trees and scrub palmettos removed from the subject site would be replaced with landscaping equal to what was removed. He noted that there were no hardwoods on the property.

Mrs. Behnke inquired about the location of the sidewalk on the private property in question.

Mr. Spraker said that the developer probably could not physically fit the sidewalk outside the property boundary, since it would have been in the stormwater pond. He guessed that the stormwater pond was constructed first, and then the sidewalk was built to avoid the stormwater pond.

Chair Thomas thought that the property was developed in the 1980's and said that having been involved with the city at that time, he simply could not imagine that the sidewalk was put there without agreement. He recalled that in the 1980's, the Planning Board developed the masonry wall requirement because in their experience, the required vegetation was often not tended and eventually died and wood fences rotted and fell into disrepair. He cautioned both staff and the Board that if the city were to continue to grant waivers to the wall requirement that had been adopted for good reason, they would again experience the same kinds of maintenance problems. He said that he moved to Ormond Beach because it was well developed, designed and cared for, even though it was more expensive than other communities in the area.

Mr. Adams appreciated Mr. Thomas' comments, but pointed out that there was a big difference between a shopping center and a dentist's office. He thought that blocking the view of the retention pond with a masonry wall was probably over-kill, since smaller commercial uses would not generate the traffic volume or have large semi-trucks to consider as would larger developments. He said that reviewing waivers was one of the reasons the Board existed, and it was up to the Board to decide whether or not it was appropriate in each instance. He understood the need for caution, but pointed out that there were mechanisms in place to address situations in which the regulations were not being enforced and that if those rules were not being followed, it was an issue to be taken up with city staff.

Chair Thomas said he probably would not be opposed to landscaping for the retention pond area, but said that the people who agreed with the wall waiver were not as directly affected as was the adjacent neighbor, who was opposed. He said he had to support Mrs. Peters.

Mr. Adams thought it was short-sighted to think that other homeowners were not affected by the use of the common areas. He stated that walls or barricades next to common area trails in his

subdivision (The Trails) were unsightly and that vegetative buffers served the same function and were more aesthetically pleasing. He thought it was not entirely fair to the applicant either, since they had purchased the property presumably with the intention of building the office and the improvements in a way that would be best for the entire homeowners association.

Mrs. Behnke questioned why the owner was requesting the variance.

Mr. Spraker explained that the reasons given by the applicant at the community meeting were 1) visual aesthetics and 2) the landscaping would provide a better buffer, since it had the ability to grow both out and up. He pointed out that the building exceeded code requirements in architecture and other site landscaping, so for their patients and the people who work there, a wall was not in keeping with their investment in their property.

Mrs. Behnke asked why the change was being requested after their approval. She said the Board was constantly being asked for exceptions after the fact, rather than the applicants stating what they really wanted from the beginning of the process.

Mr. Spraker said that the wall had been included because it was a Code requirement; however, they were aware that they had the ability to waive the code requirement through the Special Exception process. He said that the applicants had made it clear at the pre-application meeting that they did not want the wall and were very honest about it. He said that by obtaining the Special Exception for the wall waiver, they would be able to look out at the stormwater pond, which they considered more aesthetically pleasing than looking at a wall. He said that they thought the landscaping would actually provide a better buffer, and pointed out that the project actually exceeded the city's architectural standards.

Chair Thomas surmised that they had agreed to the wall in order to move the process along.

Mr. Spraker agreed that they had included the wall because of the Code requirement. He explained that they could not finish their site plan until they meet those requirements, and once finished, could proceed with the building design and other things, while proceeding to pursue the wall waiver. He stated that the applicants knew that they desired to waive the wall when they met with the HOA and conducted the community meeting. He cautioned that staff was not telling the Board how to vote, but was simply reviewing the process.

City Attorney Hayes summarized Mr. Spraker's comments that the applicants acquiesced at the beginning because it was a technical requirement of the Code to move their project along and that they fully intended at the onset to request the wall waiver; he said they had to go through the process to do so.

Mr. Spraker clarified that the applicants were not saying that they would reduce the building architecture if required to erect the wall, but might want to negotiate. He said that it was up to the applicants to defend their application, not staff.

Mr. Steve Buswell, Parker Mynchenberg and Associates, the engineer of record as well as the landscape architect, thanked Mr. Spraker for his presentation. He stated for the record that the applicant had wanted the wall waiver from the beginning, but said that much of the process was contingent on the development order, such as financing and moving forward with the building

interior plans. He said that they were proposing the additional landscape buffer for aesthetic reasons and from a “going green” standpoint. He said the hedge was to be fast-growing viburnum, which has the ability to grow to 8-10 feet tall and can be manicured; the proposed double hedge could be about eight feet (8’) wide at maturity. He pointed out that masonry walls also required maintenance to control mildew and that although landscaping was required on the inside of the wall, the outside of the wall (visible to the neighbors) would remain bare. He reported that the consensus of those attending the community meeting, summarized in the written report, was the proposed double hedge, rather than the wall. He confirmed for Mr. Jorczak that the homeowner who objected lives in Unit 200, the one most impacted by the area under construction.

Mr. Buswell stated that the trees in the common area would remain, but that the existing pine trees in the area of the proposed building would be removed. He said that the building site would require fill because the finish floor elevation for the building was required by code to be 18” above the crown of the road. He said that they would be replacing the pines with oak trees, as well as an extensive landscaping. He assured the Board that there was to be no grading off-site. He agreed that it was difficult to determine the location of the property line, given the strangeness of the sidewalk location.

Mrs. Press asked if the development order could mandate that the applicant is responsible for taking care of the sidewalk, since it is on their property. She thought someone should make a commitment of responsibility for the sidewalk.

Mr. Spraker explained that the public sidewalk belonged to the HOA and that they would have to request an easement from the property owner. He said that maintenance and liability was the responsibility of the HOA.

Mr. Buswell confirmed for Mrs. Press that the building exterior was to be stucco with stone at the base; the roof was to be of barrel tile. He also pointed out that noise connected with garbage disposal was raised as an issue at the community meeting and that rather than utilizing a dumpster, they would instead employ 96-gallon roll-off totes to be housed inside a four-foot PVC enclosure surrounded with landscaping. He said that there were two points of access off of Sage Brush Trail opposite the existing commercial area and replied to Mrs. Press that Mrs. Peters would, by Code regulations only, be looking at a 6-foot blank wall; the double hedge rows would be located on the inside of the wall. He pointed out that the viburnum was chosen because it would grow fairly rapidly, both thick and tall. He said that the hedge buffering the retention pond would be trimmed and manicured, allowing a nicer aesthetic for the patients.

Dr. Robert E. Borer, co-owner of the Miro Group LLC, explained that some of the treatment rooms would face the retention area. He clarified for the Board members that cost was never an issue with the wall; rather, it was purely aesthetics for their clientele, as well as for the neighborhood. He recalled that he and his business partner, Bruce Mann, had thought extensively about what would be more appealing and in keeping with the existing appearance and had decided that a shrub barrier would be more beneficial than a wall.

Mr. Adams asked if he would consider installing more mature plants to achieve a greater buffer height to help buffer the view for the adjacent resident from the beginning.

Dr. Borer said that they would absolutely be willing to upgrade the foliage. He stated that attendance at the community meeting was good and that he and his partner had expressed a willingness to do whatever was needed and whatever was desired by the HOA and the residents. He reiterated that the landscaping in lieu of the wall was simply for aesthetic appearances. He said that they were not cutting corners with the project and that it was going to be a beautiful, state-of-the-art endodontic dental office facility, of which they could take pride. He said that concerns had also been expressed with trash around the building, and he had therefore suggested that those with concerns visit their Palm Coast office, built about three years earlier. He said that the viburnum hedge was about four feet tall, beautiful, and served the purpose well.

Dr. Borer stressed that they did not know anything about the wall waiver option when they started the process and assured the Board members that it was not their intention to sneak something in after the fact. He said that they had advised the engineers from the beginning that they did not want the wall, but did not what could be done.

Mrs. Behnke remarked that she did not like PVC walls; she thought them to be tacky and cheap looking. She said that likewise, unless maintained in perpetuity, vegetation could also become ratty looking. She thought it would take at least two years for the viburnum to reach six feet in height.

Dr. Borer agreed with Mr. Adams that they would be willing to install whatever was recommended, whether or not it was viburnum.

Mrs. Behnke said that she liked the viburnum selection and felt that the project would be a quiet use for the neighborhood and said that between the PVC fencing and vegetation, she would choose the vegetative buffer.

Mr. Jorczak suggested that as a way to mollify the two adjacent owners, the height of the initial shrubs should be adjusted so that they did not have to wait two years for it to provide adequate screening. He felt it would be a reasonable request to which the applicant would not object. He said he also preferred vegetative screening.

Mr. Opalewski commented that he had no problem with the wall waiver. He acknowledged that he did not have to live next to the building as would Mrs. Peters, but preferred vegetation to a wall. He agreed with Mrs. Behnke that the vegetation would require maintenance, but pointed out that if walls were not maintained (painted or pressure cleaned), they could look worse than an unkempt hedge. He thought the applicant was trying to do what was best for the community with the least amount of impact and said that he favored the waiver.

After some discussion on whether or not to close the public hearing, City Attorney Hayes responded that it could be done before or after the vote, but that if closed, there could be no further discussion with staff or the public without reopening the public hearing. He stated that it was his preference to keep the public hearing open until after the vote.

Mrs. Press did not think that a valid argument for a wall waiver was a trade-off with the quality of a building being proposed.

Chair Thomas questioned that the dental patients would actually be looking out at the retention pond area; he did not think they would be in an upright position long enough to enjoy the aesthetics of the vegetation.

Dr. Borer understood his thought, but said that with the type of dentistry he practiced, the patients had 15-20 minutes to achieve anesthesia. He said that patients at their current Granada Boulevard location often commented about the scenery and wildlife and thought that there was a need for such an aesthetic component for the patients.

Chair Thomas advised the Board that although the Board was charged with doing what was best for those in the subdivision, they were also responsible for doing what was best for the entire city, as well as maintaining the City's regulations.

Mr. Adams agreed, saying that he was not favoring the subdivision at the expense of the community, but that only one person from the community had objected to the wall waiver, whereas the HOA and the remaining residents favored the wall waiver. He said he was not discounting the letter from the adjacent owner, but thought it important to acknowledge the wishes of everyone else in the area, as well.

Chair Thomas remarked that because Mr. Adams worked in real estate, their viewpoints regarding common areas might differ.

Mr. Jorczak moved to adopt staff's recommendation for SE 10-41.

Mr. Adams seconded the motion.

Mrs. Press asked if the motion should not include the requirement for more mature shrubbery to be installed initially.

Mr. Jorczak said his thought had been to require six-foot shrubs on the side adjacent to the property owner who had expressed concern, noting that at six feet, it would be the same height as the alternative fencing.

Mr. Adams seconded the motion, as amended.

Mr. Jorczak clarified for Mrs. Behnke that his motion would limit the additional requirement to the section of the property that would impact the adjacent residents. He said that although basing the motion on Option 2, he was opting for the height enhancement to be as shown in Option 3, since everything at the rear of the property overlooked the retention pond.

Ms. Jarrell called the vote on the motion to amend.

Mr. Opalewski	Yes
Mr. Adams	Yes
Mr. Jorczak	Yes
Mr. Thomas	No

Mrs. Press	Yes
Mrs. Behnke	Yes

The motion to amend was approved by a 5-1 vote.

Ms. Jarrell called the vote on the underling motion to approve (Option 2).

Mr. Opalewski	Yes
Mr. Adams	Yes
Mr. Jorczak	Yes
Mr. Thomas	No
Mrs. Press	Yes
Mrs. Behnke	Yes

The underlying motion to approve was approved by a 5-1 vote.

VIII. OTHER BUSINESS

There was no other business to be discussed.

IX. MEMBER COMMENTS

Mrs. Press acknowledged Senior Planner Steven Spraker as the City's employee of the quarter. The Board congratulated Mr. Spraker on his the recognition of his good work.

X. ADJOURNMENT

The meeting was adjourned 8:20 p.m.

Respectfully submitted,

Ric Goss, AICP, Planning Director

ATTEST:

Al Jorczak, Vice-Chair

Minutes transcribed by Betty Ruger

STAFF REPORT

City of Ormond Beach Department of Planning

DATE: May 5, 2010

SUBJECT: Ormond Park Plaza, 500 W. Granada Boulevard
Planned Business Development Amendment

APPLICANT: Dr. Melchor Gonzalez, MD, Manager M & Y Properties LLC

NUMBER: PBD 10-000095

PROJECT PLANNER: Steven Spraker, Senior Planner

INTRODUCTION:

This is a request by Dr. Melchor Gonzalez, M.D., Manager of M & Y Properties LLC, for approval of a Planned Business Development amendment for the existing project at 500 West Granada Boulevard to:

1. Incorporate the uses of the B-9 (Boulevard) zoning district; and
2. Allow as a retail use, wine store to include wine and beer for off-premise consumption and wine and beer for on premise consumption so long as the floor area dedicated to the on-premise consumption shall not exceed more than 25% of the gross leasable floor area; and
3. To eliminate an existing condition in the existing Development Order limiting restaurants to a maximum of 15 seats per unit.

There are no site or building improvements proposed with the current application.

Zoning and Adjacent Land Uses

The adjacent land uses and zoning classifications are illustrated in the following table:

	Current Land Uses	Future Land Use Designation	Zoning
North	Office Professional	"Office Professional"	B-9 (Boulevard)
South	Assisted Living Facility (The Arbors)	"Medium Density Residential"	R-4C (Single Family Cluster & Townhouse)
East	Office Professional (Bank)	"Office Professional"	B-9 (Boulevard)
West	Vacant Land	"Office Professional"	(B-9 Boulevard)

BACKGROUND:

The subject property is currently designated as "Office Professional" and on the City's Future Land Use Map (FLUM) and is classified as Planned Business Development on the City's Official Zoning Map.

On November 24, 2004, the Site Plan Review Committee (SPRC) approved a site plan application for a 9,259 square-foot building for office uses at 500 West Granada Boulevard. The application was submitted and approved under the 1992 Land Development Code. For the R-4 portion of the site, the improvements included a retention pond and landscaping. The approved site plan showed a six foot (6') high masonry wall where the project abutted the Assisted Living Facility to the south.

On October 3, 2006, the City Commission approved Resolution 2006-223 that authorized a wall waiver between the subject property and the Assisted Living Facility with the condition that if in the future, the existing fence were to be removed, the applicant would be required to replace it with a shadow-box fence in the same style as the one that currently exists on the rear of the property between the Ormond Beach Commercial Complex and The Arbors. The Certificate of Completion for the building was issued on March 12, 2007.

On May 8, 2008, the City Commission approved Ordinance 08-23 that amended the Future Land Use designation of the rear 0.32-acre of the property, from "Medium Density Residential" to "Office/Professional".

On July 15, 2008, the City Commission approved Ordinance 08-29 that approved a rezoning from B-9 (Boulevard) and R-4 (Single-Family Cluster & Townhouse) to Planned Business Development (PBD) to allow a mixture of permitted uses on an existing developed site located at 500 West Granada as follows:

1. Specialty Retail Sales & Services, including personal services, not to exceed 5,288 square feet of gross floor area or 57% of the total gross floor area;
2. Restaurant Type "A" (sit-down), less than 15 seats;
3. Restaurant Type "B" (sandwich shop, ice cream shop), less than 15 seats;
4. Business and Professional Offices; or
5. Clinic, Medical or Dental.

PROJECT DESCRIPTION:

During the 2008 rezoning application, the property owner stated while the project was undergoing permitting and the construction process, Florida Hospital announced their plans to relocate to Williamson Boulevard and the site was no longer a viable location for his cardiology office. Dr. Gonzalez and his real estate professionals have proposed a number of uses that staff has been unable to permit, based on the allowable uses in the B-9 zoning district. Dr. Gonzalez has indicated that the unit sizes would be more appropriate for smaller, personal service or retail uses than for offices.

The existing building consists of seven units that are 1,322 square feet with Units 1 & 2 combined (floor area of 2,644 square feet). There are a total of 50 parking spaces for the project. Since the 2008 PBD rezoning, the property owner has continued to attempt to lease out the building with tenants. The property owner has begun discussions with staff to tweak the permitted uses within the complex that has lead to the current amendment.

ANALYSIS:

The application proposes three modifications to the existing Development Order, as discussed below:

1. Incorporate the uses of the B-9 (Boulevard) zoning district.

The uses of the B-9 (Boulevard) zoning district are listed below:

Permitted Uses	Conditional Uses	Special Exception
1. Adult Day Care Center 2. Assisted Living Facility 3. Business/ Professional Services 4. Business Services 5. Clubs and Fraternal Organization 6. Financial Institution 7. Nursing Home 8. School, Public 9. Veterinarian	1. Child Care Facility 2. Community Residential Home 3. Dwelling, Multi-Family 4. Family Day Care Home 5. House of Worship 6. Parks and Recreation Facilities, Private 7. Parks and Recreation Facilities, Public 8. Public Facilities 9. Public Utilities 10. Recreational Facilities, Indoor 11. Restaurant, Type "A" 12. Retail Sales, Specialty 13. School, Private 14. Telecommunications Towers, Camouflaged 15. Wind Energy System	1. Outdoor Activity 2. Outdoor Storage 3. Recreational Facilities, Outdoor

The subject property was previously zoned as B-9 and staff has no objection to referencing this zoning district in the development order or in allowing these uses.

Since the 2008 amendment, this zoning district has been amended to include *veterinarian* and *financial institution*, both as permitted uses. The uses listed as conditional would need to comply with the conditions listed in Section 2-57, Criteria for Review of Specific Conditional and Special Exception. The uses listed as Special Exception, would require review by the Planning Board and approval by the City Commission.

2. Allow a retail wine store as part of the allowed retail square footage of the complex.

This use proposes to have retail sales of wine with a portion of the store utilized for the on-site consumption of the wine. The property owner has indicated that they do not have a tenant identified for this use, but are seeking to maintain flexibility with the Development Order. There have been other similar uses that operate as restaurants, which allow consumption of alcohol as a part of the restaurant; the Ormond Wine Company is an example. The City recently approved an amendment to the Nova Shoppes PBD to allow the retail sales of wine with consumption on premise under certain conditions. During the Planning Board review of the Nova Shoppes amendment, Board members did acknowledge that this was a unique use that the Land Development Code did not envision.

As was approved for the Nova Shoppes development, staff would recommend the use with the following conditions:

1. A retail wine store use to include wine and beer for off-premise consumption
2. Wine and beer for on-premise consumption so long as the floor area dedicated to the on-premise consumption shall not exceed more than 25% of the gross leasable floor area.
3. The use shall be limited to a 2-COP liquor license.
4. The maximum square footage devoted to the on-site consumption of wine and beer shall not exceed 750 square feet.

3. Eliminate an existing condition in the existing Development Order limiting restaurants to a maximum of 15 seats per unit.

The applicant is requesting to eliminate an existing condition that limited restaurant seating to fifteen (15). The existing Development Order permits a restaurant type "A" and type "B". The Land Development Code defines the restaurants as follows:

Type "A": Restaurants have minimum requirements to serve at least 150 persons full course meals at tables at one time, and derives at least 51% of its gross revenue from the sale of food and nonalcoholic beverages. Any Type "A" restaurant may apply for a Special Restaurant License to serve alcohol.

Type "B": Have less than 150 seats that serve customers attracted from their immediate area and not generally dependent on exposure to heavy automotive traffic. Type "B" establishments are permitted to offer beer and wine only.

The key distinction is that a Type “A” restaurant is required to have 150 seats and may have the full service alcohol license.

One key concern of staff in allowing a restaurant at this location was the parking calculation. The original amendment envisioned an ice cream store or sandwich shop. The project has received interest in a small restaurant that would meet the parking calculation for the center. The project also has the potential to obtain parking agreements with the bank to the east of the property if additional is required. The applicant has requested to remove the seat limitation for the restaurant use. The amendment does not propose to amend the parking calculations and any use would be required to demonstrate adequate parking.

Consistency with Comprehensive Plan

The property is designated as “Office/Professional” on the City’s Future Land Use Map (FLUM). The directive text of the Comprehensive Plan states,

“This category includes those areas of the City that are intended for use by general office, medical and professional uses.

The Office/Professional land use would generally include the B-1, B-9 and B-10 (Professional Office-Hospital, Boulevard, and Suburban Boulevard) zoning district regulations which also include multi-family residential development which is compatible with this classification.”

Chapter 2, Article II, Section 2-36.C. of the Land Development Code states,

“A PBD may incorporate any commercial or residential development allowed as permitted uses in the underlying zoning district designation, as well as any commercial or residential uses allowed under the Code for any district, provided the following findings are made.”

- 1. The use is specifically shown on the site plan and includes a list of all proposed uses not permitted in the underlying zoning district (to the maximum extent known at the time of site plan submittal), a general description of the location, floor area to be occupied by such use, typical hours of operation and other relevant operation characteristics.**

The applicant has provided the list of uses (described above) in this report. The exact square footage and location of specific uses are unknown at this time, as the applicant is seeking to lease existing units.

- 2. The use, by virtue of its location, vehicular circulation pattern, noise and visual buffering, traffic generation rates and peak traffic hours, odor emission controls, lighting and use of materials will not have an adverse impact on surrounding land uses, particularly where the site abuts areas developed with or zoned primarily for single-family homes.**

The property abuts commercial uses to the east and west. To the south of the property is an assisted living facility. The existing B-9 uses allow medical

offices, which have a trip generation rate similar to requested uses. Through the original site plan approval, the project has been designed to conform to the City buffering requirements. The uses around the property include the Office Depot and the Wachovia Bank.

3. Conversion of occupancy from a use approved under a PBD to a permitted use in the underlying district will not require an amendment to the PBD.

The applicant is requesting the uses listed in the Analysis section of this report (above). The purpose of the amendment is to provide flexibility for leasing.

4. The use does not exceed any size limitations, use restrictions or other requirements provided under Chapter 2, Article II of this Code.

There are no site modifications associated with this request and the proposed uses will not exceed the size limitations, use restrictions or other requirements provided under Chapter 2, Article II of this Code.

PLANNED BUSINESS DEVELOPMENT CRITERIA:

In considering an application for a Planned Business Development, the Planning Board may recommend to approve, approve with conditions, or disapprove on the extent to which the development offers site amenities above that normally found for permitted uses in the district with regard to the following:

a) Building form, architecture and appropriateness of materials with regard to long-term maintenance, relation to the surrounding neighborhood, and aesthetics. Architectural drawings shall be approved as part of the Development Order and adhered to in all development phases.

The application for the rezoning does not propose any new construction. The existing building complies with the Mediterranean architectural style.

b) Landscaping and related site amenities.

The 2004 site plan approval contains site landscaping drawings which have been installed. As part of this application, City staff performed an inspection of the site and there are no major violations.

c) Mitigation of off-site impacts.

The 2004 site plan approval reviewed the potential off-site impacts and the project was determined acceptable. The site did receive a wall waiver in 2006, which shall continue through this application. No site changes are proposed with the application.

d) Overall lighting plan, particularly in relation to aesthetics and glare.

The site lighting has been installed and the proposed application will not negatively impact surrounding properties.

e) Overall signage plan, particularly related to aesthetics and readability.

The site has been designed with one monument sign and there are no changes to the site signage. The existing sign is coordinated with the building.

There are certain criteria that must be evaluated before a Planned Business Development amendment can be approved. According to Chapter 1, Article I, Section 1-15.C.3 of the Land Development Code, the Planning Board shall consider the following when making its decision:

1. The proposed development conforms to the standards and requirements of this Code and will not create undue crowding beyond the conditions normally permitted in the zoning district, or adversely affect the public health, safety, welfare or quality of life.

The proposed development conforms to the standards of the Land Development Code. Staff believes that each use option will not create undue crowding beyond the conditions normally permitted in the zoning district, or adversely affect the public health, safety, welfare or quality of life.

2. The proposed development is consistent with the Comprehensive Plan.

The subject property is currently designated as "Office/Professional" on the City's Future Land Use Map. The land use specifically allows general, medical office, and professional uses. Staff concludes that the mixture of uses proposed by the applicant is consistent with the land use.

3. The proposed development will not adversely impact environmentally sensitive lands or natural resources, including but not limited to water bodies, wetlands, xeric communities, wildlife habitats, endangered or threatened plants and animal species or species of special concern, wellfields, and individual wells.

The project is a developed site and will not adversely impact environmentally sensitive lands or natural resources.

4. The proposed use will not substantially or permanently depreciate the value of surrounding property; create a nuisance; or deprive adjoining properties of adequate light and air; create excessive noise, odor, glare, or visual impacts on the neighborhood and adjoining properties.

The area around the project is developed with a wide range of uses including a bank, an assisted living facility, and an Office Depot across Granada Boulevard. The proposed uses will not substantially or permanently depreciate the value of surrounding property; create a nuisance; or deprive adjoining properties of adequate light and air; create excessive noise, odor, glare, or visual impacts on the neighborhood and adjoining properties.

5. There are adequate public facilities to serve the development, including but not limited to roads, sidewalks, bike paths, potable water, wastewater treatment, drainage, fire and police safety, parks and recreation facilities, schools, and playgrounds.

There are adequate public facilities to serve the proposed development, including water, wastewater, roads, public safety, and stormwater. The mixture of uses will not impact the infrastructure required to serve the building.

6. Ingress and egress to the property and traffic patterns are designed to protect and promote motorized vehicle and pedestrian/bicycle safety and convenience, allow for desirable traffic flow and control, and provide adequate access in case of fire or catastrophe. This finding shall be based on a traffic report where available, prepared by a qualified traffic consultant, engineer or planner which details the anticipated or projected effect of the project on adjacent roads and the impact on public safety.

Traffic impacts were reviewed on the 2004 approval. The potential change in permitted uses is within the range of impacts previously considered. The proposed use will not negatively impact public roadways and there is adequate traffic capacity to serve this project.

7. The proposed development is functional in the use of space and aesthetically acceptable.

The developed site is functionally and architecturally acceptable.

8. The proposed development provides for the safety of occupants and visitors.

The proposed uses will not impact the safety of the project's occupants and visitors.

9. The proposed use of materials and architectural features will not adversely impact the neighborhood and aesthetics of the area.

The existing building and material will not adversely impact the aesthetics of the area and is designed in the Mediterranean architectural style.

10. The testimony provided at public hearings.

This application has not been heard and no public testimony has been provided.

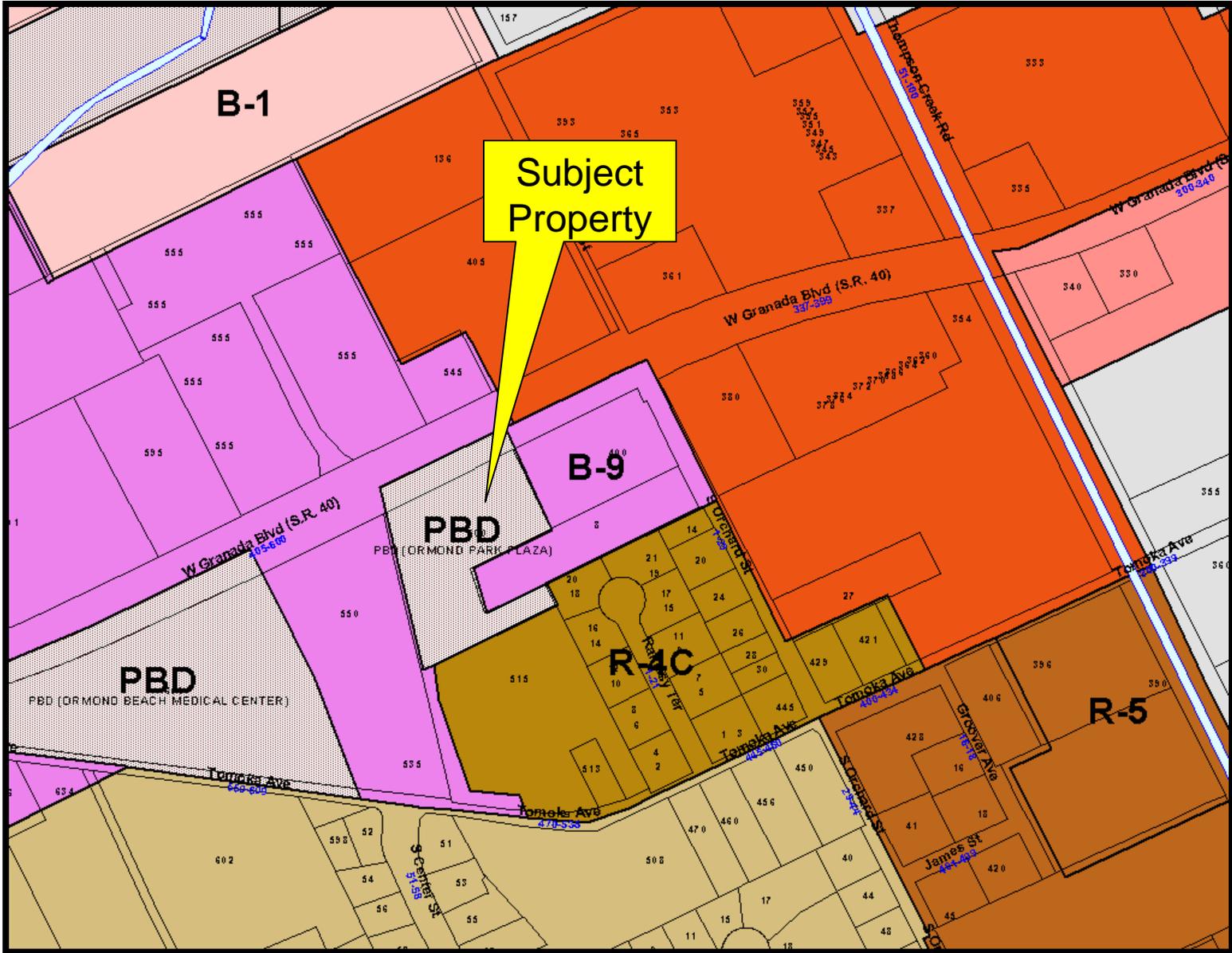
RECOMMENDATION:

It is expected that the application will be reviewed by the City Commission on June 22, 2010 (1st reading) and July 6, 2010 (2nd reading). It is recommended that the Planning Board recommend **APPROVAL** of case PBD 10-95 for a Planned Business Development amendment to allow the following modifications:

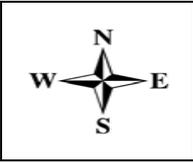
1. Incorporate the uses of the B-9 (Boulevard) zoning district;
2. Allow a retail wine store with the following conditions:
 - a. A retail wine store use to include wine and beer for off-premise consumption.
 - b. Wine and beer for on-premise consumption so long as the floor area dedicated to the on-premise consumption shall not exceed more than 25% of the gross leasable floor area.
 - c. The use shall be limited to a 2-COP liquor license.
 - d. The maximum square footage devoted to the on-site consumption of wine and beer shall not exceed 750 square feet.
3. Eliminate an existing condition in the current Development Order limiting restaurants to a maximum of 15 seats per unit.

Exhibit A

Maps & Pictures



Zoning MAP
500 West Granada Boulevard





SALON

500

ORMOND PARK PLAZA
PRINTING & SIGNS
BE CARDS

TAIR SALON

Exhibit B

Ordinance 2008-29

ORDINANCE NO. 2008-29

AN ORDINANCE AMENDING PARAGRAPH C, OFFICIAL ZONING MAP, OF SECTION 2-01, ESTABLISHMENT OF ZONING DISTRICTS AND OFFICIAL ZONING MAP, OF ARTICLE I, ESTABLISHMENT OF ZONING DISTRICTS AND OFFICIAL ZONING MAP, OF CHAPTER 2, DISTRICT AND GENERAL REGULATIONS, OF THE LAND DEVELOPMENT CODE, BY AMENDING THE OFFICIAL ZONING MAP TO REZONE CERTAIN REAL PROPERTY TOTALING ±2.10-ACRES LOCATED AT 500 WEST GRANADA BOULEVARD, FROM B-9 (BOULEVARD) AND R-4 (SINGLE-FAMILY CLUSTER & TOWNHOUSE) TO PLANNED BUSINESS DEVELOPMENT (PBD), AUTHORIZING REVISION OF OFFICIAL ZONING MAP; APPROVING A DEVELOPMENT ORDER FOR "ORMOND PARK PLAZA" PLANNED BUSINESS DEVELOPMENT; ESTABLISHING CONDITIONS; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

WHEREAS, M&Y Properties, LLC, a Florida limited liability company, the property owner, has initiated this Ordinance to rezone that specific parcel of privately-owned real property located at 500 West Granada Boulevard consisting of approximately 2.10-acres ("Property"), from B-9 (Boulevard) and R-4 (Single-Family Cluster & Townhouse) to Planned Business Development in accordance with Article I, Chapter 2, of the *Land Development Code*, and

WHEREAS, the property to be rezoned involves less than ten (1) contiguous acres, and

WHEREAS, the property owner has also submitted an application for a Development Order for a Planned Business Development (“Project”) pertaining to the Property, and

WHEREAS, the proposed Project consists of an existing 9,257 square-foot building to be developed to allow a mixture of permitted uses on the subject property, and

WHEREAS, the proposed Project shall maintain the uses and dimensional standards of the B-9 (Highway Tourist Commercial) zoning district, and

WHEREAS, the Planning Board held a public hearing regarding this matter as required by Chapter 1, Article II, Section 1-15D, of the *Land Development Code*, following which it recommended the approval of the application for rezoning and Planned Business Development, and

WHEREAS, the City Commission held a public hearing regarding this matter as required by Section 166.041(3)(c)(2), *Florida Statutes*, and

WHEREAS, all applicable legal notice requirements have been complied with, and

WHEREAS, the City Commission finds, based on substantial competence evidence, that the application to rezone the Property from B-9 (Boulevard) and R-4 (Single-Family Cluster & Townhouse) to Planned Business Development is consistent with the Future Land Use Element and the Future Land Use Map of the City’s *Comprehensive Land Use Plan*,

that it is consistent with the City's *Land Development Code*, and that it is consistent with the general laws of Florida, and

WHEREAS, the City Commission has considered the following:

- (1) The report and recommendations of the Planning Board;
- (2) The report and recommendations of the Site Plan Review Committee; and
- (3) The comments of governmental agencies, utility corporations and individuals, as received, and
- (4) The testimony of the City's planning staff, the Applicant, expert witnesses, persons that may be affected as a result of the application, and documentary evidence pertaining thereto, if any, and

WHEREAS, the City Commission further finds that with respect to the application for the issuance of a Development Order for a Planned Business Development, that there is competent substantial evidence to support the following:

- (1) The proposed land use is expressly provided for in the Planned Business Development zoning district and is consistent with the purpose and intent of the *Land Development Code* and all elements of the *Comprehensive Land Use Plan*;
- (2) The proposed land use will not create undue crowding beyond the conditions normally permitted in the Planned Business Development zoning district, or adversely affect the public health, safety, welfare or quality of life;
- (3) The proposed land use will not adversely impact environmentally sensitive lands or natural resources, including but not limited to waterbodies, wetlands, xeric communities, wildlife habitats, endangered or threatened

plants and animal species or species of special concern, wellfields, and individual wells;

- (4) The proposed land use will not substantially or permanently depreciate the value of surrounding property; create a nuisance; or deprive adjoining properties of adequate light and air; create excessive noise, odor, glare, or visual impacts on the neighborhood and adjoining properties;
- (5) Public facilities, such as roads, sidewalks, bike paths, potable water, wastewater treatment, drainage, fire and police safety, parks and recreation facilities, schools, and playgrounds will not be unduly burdened and are adequate to serve the proposed land use;
- (6) Ingress and egress to the property and traffic patterns are designed to protect and promote motorized vehicle and pedestrian/bicycle safety and convenience, allow for desirable traffic flow and control, and provide adequate access in case of fire or catastrophe;
- (7) The proposed land use is functional in the use of space and aesthetically acceptable;
- (8) The proposed land use provides for the safety of occupants and visitors;
- (9) The proposed use of materials and architectural features will not adversely impact the neighborhood and aesthetics of the area; and
- (10) The testimony provided at public hearings, and

WHEREAS, the City Commission in accordance with Chapter 2, District and General Regulation, of Article II, District Regulations, of Section 2-36 Planned Business Development (PBD), of the *Land Development Code*, may base its conditions of approval or

denial of the issuance of a development order on the extent to which the development offers site amenities above that normally found for permitted uses in the district with regard to the following:

- (1) Building form, architecture and appropriateness of materials with regard to long-term maintenance, relation to the surrounding neighborhood and aesthetics, architectural drawings shall be approved as part of the Development Order and adhere to in all development phases;
- (2) Landscaping and related site amenities including fountains, plazas, benches, and the like;
- (3) Mitigation of off-site impacts;
- (4) Overall lighting plan, particularly in relation to aesthetics and glare reduction; and
- (5) Overall signage plans, particularly in relation to aesthetics and readability, now therefore,

BE IT ENACTED BY THE PEOPLE OF THE CITY OF ORMOND BEACH, FLORIDA, THAT:

SECTION ONE. Paragraph C, Official Zoning Map, of Section 2-01, Establishment of Zoning Districts and Official Zoning Map, of Article I, Establishment of Zoning Districts and Official Zoning Map, of Chapter 2, District and General Regulations, of the *Land Development Code* of the City of Ormond Beach, Florida is hereby amended by amending the Official Zoning Map, which is part of the said *Code*, to change the present zoning classification for the real property, consisting of 2.10-acres described and depicted on Exhibit

“A” attached hereto and incorporated herein by reference, from B-9 (Boulevard) and R-4 (Single-Family Cluster & Townhouse) to Planned Business Development (PBD).

SECTION TWO. The City Commission further approves a Development Order for a Planned Business Development within an existing 9,257 square-foot building to be known as “Ormond Park Plaza”, in accordance with that development order attached hereto and incorporated herein by reference, the following permitted uses are hereby authorized:

1. Specialty Retail Sales & Services, including personal services, not to exceed 5,288 square feet of gross floor or fifty percent (57%) of the total gross floor area;
2. Restaurant Type “A” (sit-down), less than 15 seats;
3. Restaurant Type “B” (sandwich shop, ice cream shop), less than 15 seats;
4. Business and Professional Offices; or
5. Clinic, Medical or Dental.

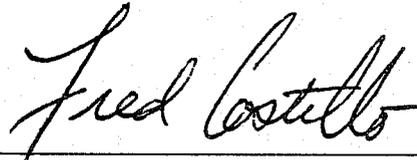
SECTION THREE. The Mayor and the City Manager are authorized and directed to execute and issue the attached Development Order for the Planned Business Development.

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

SECTION FIVE. This Ordinance shall take effect immediately upon its adoption.

PASSED UPON at the first reading of the City Commission, this 24th day of
June, 2008.

PASSED UPON at the second and final reading of the City Commission this 15th
day of July, 2008.



FRED COSTELLO
Mayor

ATTEST:



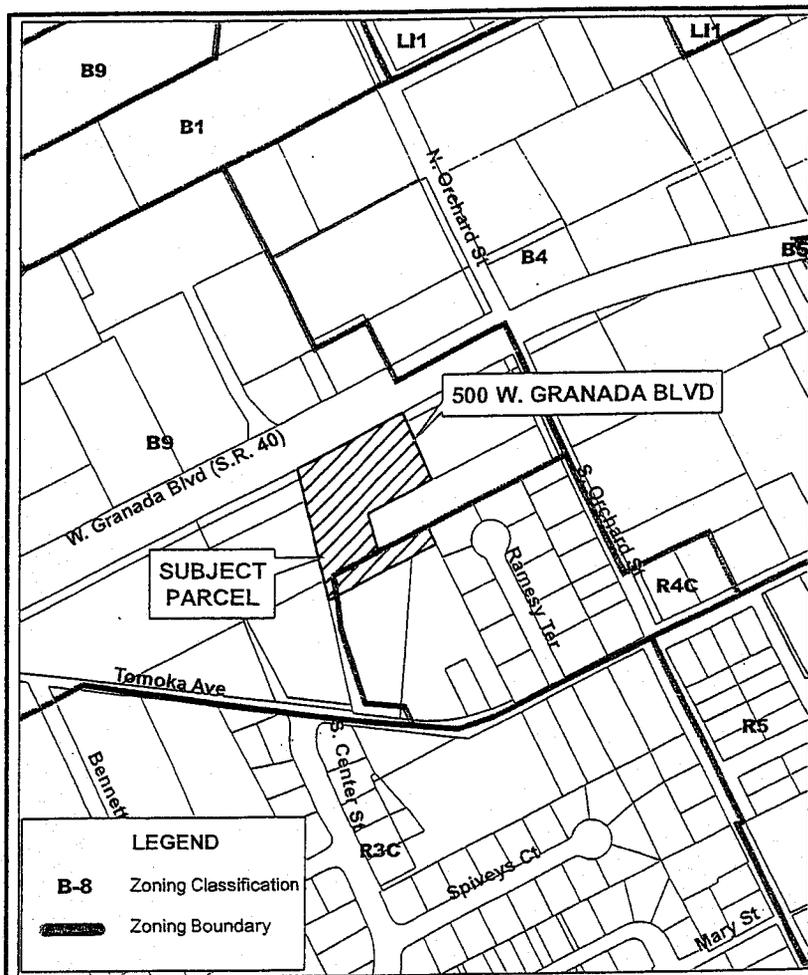
VERONICA PATTERSON
City Clerk

EXHIBIT "A"

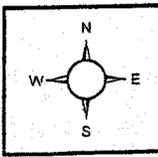
Instrument# 2008-148339 # 8
Book: 6258
Page: 1096

LEGAL DESCRIPTION

BEING A PART OF GRANT LOTS 5, 6 AND 6 1/2, ORMOND, PER MAP BOOK 2, PAGE 118 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A CONCRETE MARKER AT THE NORTHEASTERN CORNER OF THE EASTERLY 60 FEET OF THE WESTERLY 134 FEET OF LOT "E" OF GRANT LOT 5, ORMOND AS RECORDED IN SAID MAP BOOK 2, PAGE 118 AS NOW SURVEYED AND ESTABLISHED; THENCE S 25° 56' 03" E ALONG THE WEST LINE OF THE WESTERLY 271 FEET OF THE EASTERLY 371 FEET OF LOT "E", GRANT LOT 5 AS NOW SURVEYED AND ESTABLISHED A DISTANCE OF 50.00 FEET, THENCE RUN S 64° 10' 36" W, 317.37 FEET TO THE CENTER OF A DRAINAGE CANAL; THENCE N 12° 28' 00" W ALONG THE CENTER OF SAID CANAL, 343.78 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF GRANADA AVENUE; THENCE N 64° 00' 48.5" E ALONG THE SAID SOUTHERLY RIGHT OF WAY LINE A DISTANCE OF 303.50 FEET; THENCE S 25° 56' 21" E, 183.95 FEET; THENCE S 64° 00' 48.5" W, 190.63 FEET; THENCE S 17° 07' 47" E, 101.75 FEET; THENCE N 64° 10' 36" E, 140.00 FEET ALONG THE SOUTHERLY LINE OF LOT "F" GRANT LOT 6 AS NOW SURVEYED AND ESTABLISHED TO THE POINT OF BEGINNING AND TO CLOSE



ZONING MAP
500 W. GRANADA BLVD (4241-01-13-0072)
The City of Ormond Beach
G.I.S. Department
Prepared by: Steve Johnson 2/25/08



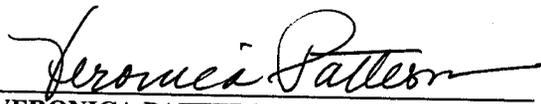
CERTIFICATE

STATE OF FLORIDA
COUNTY OF VOLUSIA
CITY OF ORMOND BEACH

I, Veronica Patterson, City Clerk of the City of Ormond Beach, Florida, do hereby certify that the foregoing is a true, correct and complete copy of Ordinance No. 2008-29 as the same appears of record at City Hall, City of Ormond Beach, Florida.

Dated this 16th day of July 2008.

SEAL


VERONICA PATTERSON
City Clerk
CITY OF ORMOND BEACH, FLORIDA

**BEFORE THE
CITY COMMISSION
OF THE
CITY OF ORMOND BEACH**

IN RE: Application of M & Y Properties, LLC, a Florida limited liability company
PBD 08-06 (SPRC 03-12-948)
"Ormond Park Plaza"
500 West Granada Boulevard
Parcel ID No.: 4241-01-13-0072

DEVELOPMENT ORDER

This matter having come on for public hearing before the City Commission of the City of Ormond Beach, Florida, on June 24, 2008 and July 15, 2008, and the City Commission having considered those items as required by Section 1-18(D) of the *Land Development Code*, and having heard testimony and evidence from all affected persons, the City Commission hereby finds that:

1. The proposed land use is expressly provided for in the Planned Business Development zoning district and is consistent with the purpose and intent of the *Land Development Code* and all elements of the *Comprehensive Land Use Plan*;
2. The proposed land use will not create undue crowding beyond the conditions normally permitted in the Planned Business Development zoning district, or adversely affect the public health, safety, welfare or quality of life;
3. The proposed land use will not adversely impact environmentally sensitive lands or natural resources, including but not limited to waterbodies, wetlands, xeric communities, wildlife habitats, endangered or threatened plants and animal species or species of special concern, wellfields, and individual wells;
4. The proposed land use will not substantially or permanently depreciate the value of surrounding property; create a nuisance; or deprive adjoining properties of adequate light and air; create excessive noise, odor, glare, or visual impacts on the neighborhood and adjoining properties;
5. Public facilities, such as roads, sidewalks, bike paths, potable water, wastewater treatment, drainage, fire and police safety, parks and recreation facilities, schools, and playgrounds will not be unduly burdened and are adequate to serve the proposed land use;

6. Ingress and egress to the property and traffic patterns are designed to protect and promote motorized vehicle and pedestrian/bicycle safety and convenience, allow for desirable traffic flow and control, and provide adequate access in case of fire or catastrophe;
7. The proposed land use is functional in the use of space and aesthetically acceptable;
8. The proposed land use provides for the safety of occupants and visitors;
9. The proposed use of materials and architectural features will not adversely impact the neighborhood and aesthetics of the area; and
10. The testimony provided at public hearings, and

Thereupon and in consideration thereof, the City Commission hereby orders

that:

A. The application of M & Y Properties, LLC, a Florida limited liability company, also being the property owner, of real property located at 500 West Granada Boulevard ("Property"), for a Development Order for a Planned Business Development to be known as the "Ormond Park Plaza" within an existing 9,257 square-foot building to be developed to allow a mixture of permitted uses, on that Property more particularly described and depicted in Exhibit "A" attached hereto and incorporated herein by reference, is hereby granted, subject to the following conditions:

1. All applicable provisions of Chapter 2, District and General Regulations, Article II, District Regulations, Section 2-36, Planned Business Development, of the City of Ormond Beach *Land Development Code*, except as otherwise specifically modified hereby, shall at all times be strictly complied with;
2. Incorporates Resolution 2006-223 approved by the City Commission on October 3, 2006 and recorded in Official Records Book 5930 at pages 2988 through 2998, inclusive of the public records of Volusia County, Florida, which authorized a wall waiver between the subject property and the Assisted Living Facility to the south of the property with the condition that if, in the future, the existing fence is removed, applicant is required to replace it with a shadow-box fence in the same style as the one that currently exists at the location on the rear of the property between the Ormond Beach Commercial Complex and the Arbors.
3. Incorporates the uses and dimensional standards of the B-9 (Boulevard) zoning district.

4. Chapter 3, Article VI, Section 3-70.1.g, requiring the maximum clearance between the pavement and the canopy ceiling shall be 14.5 feet is hereby waived to allow the canopy height to be 16 feet, based on the site grading.

5. The following permitted uses are hereby authorized:

- a. Specialty Retail Sales & Services, including personal services, not to exceed 5,288 square feet of gross floor or fifty percent (57%) of the total gross floor area;
- b. Restaurant Type "A" (sit-down), less than 15 seats;
- c. Restaurant Type "B" (sandwich shop, ice cream shop), less than 15 seats;
- d. Business and Professional Offices; or
- e. Clinic, Medical or Dental.

B. The final plans for the development project shall be consistent with all of the conditions listed in this Development Order and as depicted in the plans as constructed and approved by the Site Plan Review Committee (SPRC No. 03-12-948) attached hereto as Exhibit "B" incorporated herein by reference.

C. No material change shall be made to the final plan for the development project without further review by the Planning Board and approval by the City Commission in accordance with the procedures for the approval or modification of development orders.

D. All site construction activity shall be performed in strict compliance with the terms and conditions of this Development Order approved for this development project, and of the *Land Development Code*.

E. In the event the use of the land approved by this Planned Business Development Order is abandoned for a period of two (2) years or, if construction activity has not commenced during that period, any permit issued hereunder this Planned Business Development Order shall automatically become void, a Notice of Final Plan Revocation shall be filed under the provisions of Section 1-14(C)(2) of the *Land Development Code*, and a new application for a Planned Business Development Order must be submitted for consideration in accordance with the requirements of the *Land Development Code*.

F. The Neighborhood Improvement Officer shall semi-annually prepare a report indicating which planned developments are not in compliance with Section 1-14, or with

the conditions provided in the Planned Business Development Order. In the event a Neighborhood Improvement Officer determines there to be any violation, such Officer shall initiate appropriate code enforcement action for hearing before the City's Special Master.

G. This Development Order shall be recorded in the public records of Volusia County, Florida, at the expense of M & Y Properties, LLC, a Florida limited liability company, the property owner; and shall be binding upon the M & Y Properties, LLC, a Florida limited liability company, the property owner, including its successors and assigns; and shall run with the real property legally described in Exhibit "A" attached hereto and incorporated herein by reference.

ORDERED this 15th day of July, 2008.

CITY COMMISSION
CITY OF ORMOND BEACH, a Florida
municipal corporation

By: 
FRED COSTELLO
Mayor

(CITY SEAL)

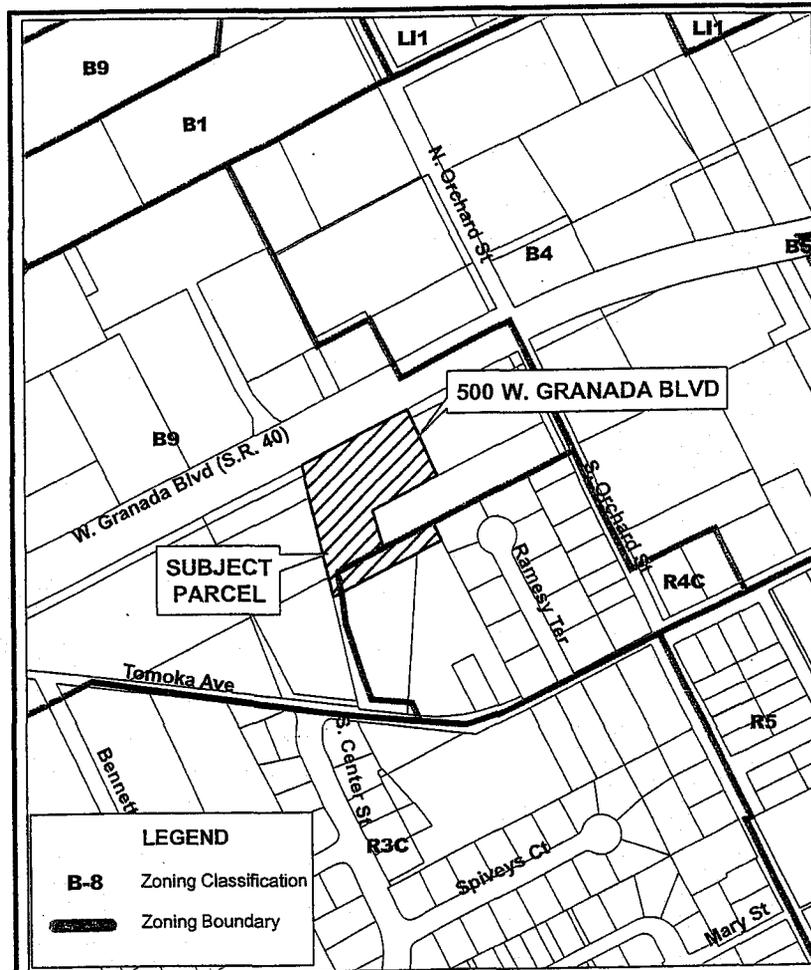
Attest: 
ISAAC D. TURNER
City Manager

EXHIBIT "A"

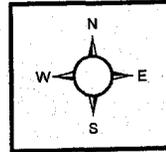
Instrument# 2008-148340 # 5
 Book: 6258
 Page: 1102

LEGAL DESCRIPTION

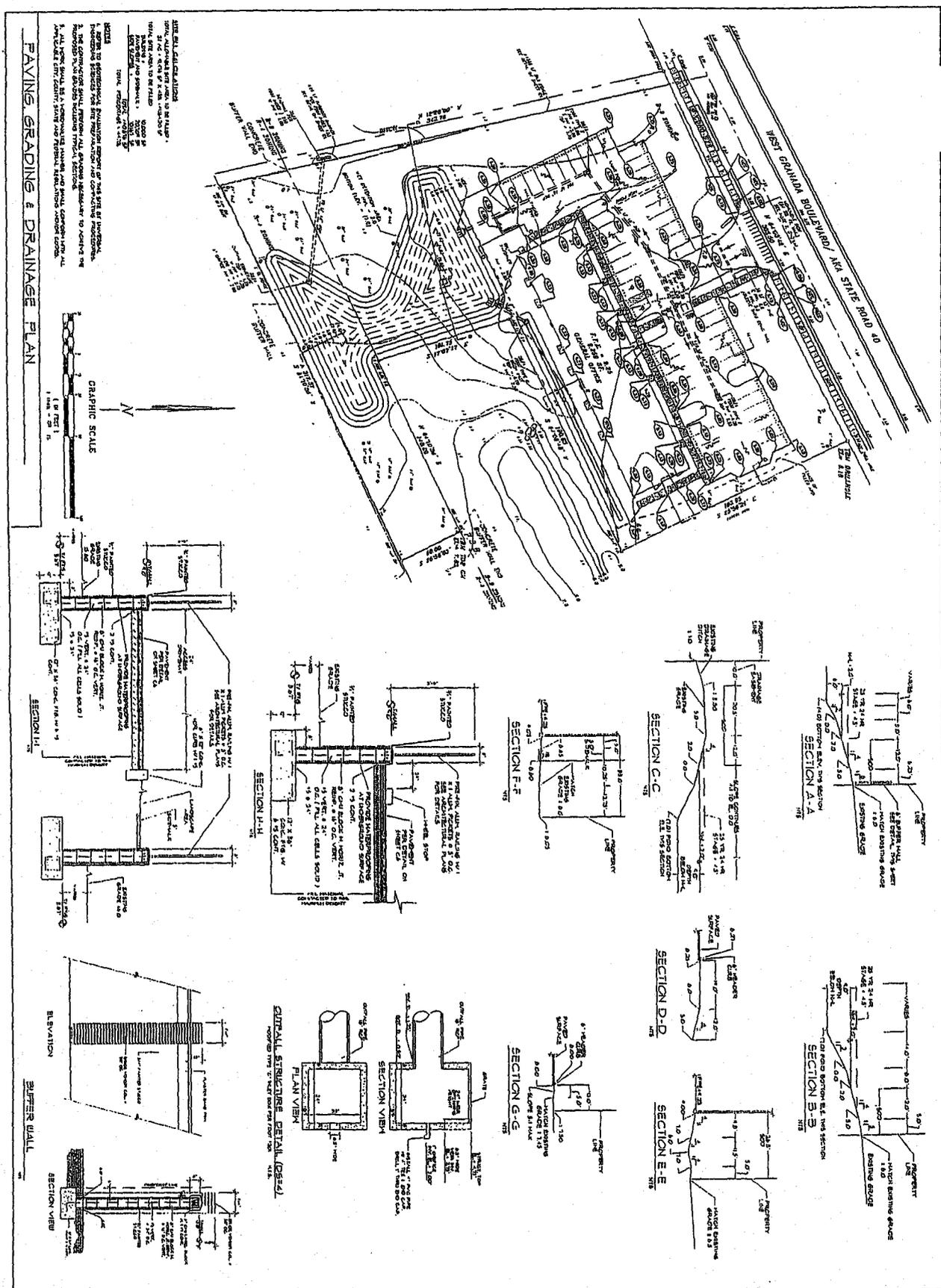
BEING A PART OF GRANT LOTS 5, 6 AND 6 1/2, ORMOND, PER MAP BOOK 2, PAGE 118 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A CONCRETE MARKER AT THE NORTHEASTERN CORNER OF THE EASTERLY 60 FEET OF THE WESTERLY 134 FEET OF LOT "E" OF GRANT LOT 5, ORMOND AS RECORDED IN SAID MAP BOOK 2, PAGE 118 AS NOW SURVEYED AND ESTABLISHED; THENCE S 25° 56' 03" E ALONG THE WEST LINE OF THE WESTERLY 271 FEET OF THE EASTERLY 371 FEET OF LOT "E"; GRANT LOT 5 AS NOW SURVEYED AND ESTABLISHED A DISTANCE OF 50.00 FEET, THENCE RUN S 64° 10' 36" W, 317.37 FEET TO THE CENTER OF A DRAINAGE CANAL; THENCE N 12° 28' 00" W ALONG THE CENTER OF SAID CANAL, 343.78 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF GRANADA AVENUE; THENCE N 64° 00' 48.5" E ALONG THE SAID SOUTHERLY RIGHT OF WAY LINE A DISTANCE OF 303.50 FEET; THENCE S 25° 56' 21" E, 183.95 FEET; THENCE S 64° 00' 48.5" W, 190.63 FEET; THENCE S 17° 07' 47" E, 101.75 FEET; THENCE N 64° 10' 36" E, 140.00 FEET ALONG THE SOUTHERLY LINE OF LOT "F" GRANT LOT 6 AS NOW SURVEYED AND ESTABLISHED TO THE POINT OF BEGINNING AND TO CLOSE



ZONING MAP
 500 W. GRANADA BLVD (4241-01-13-0072)
 The City of Ormond Beach
 G.I.S. Department
 Prepared by: Steve Johnson 2/25/08

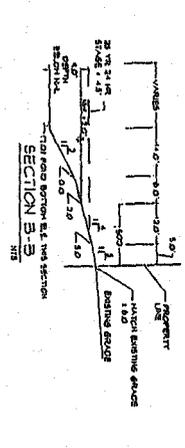
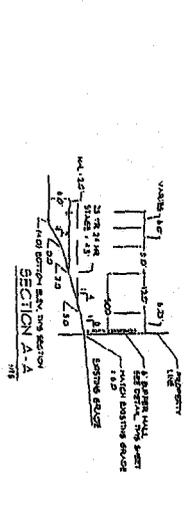
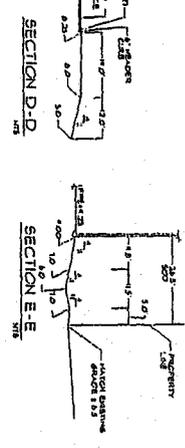
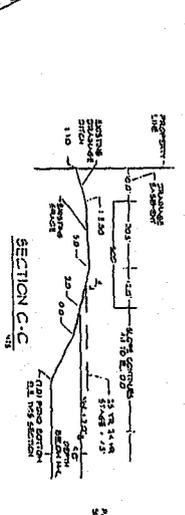
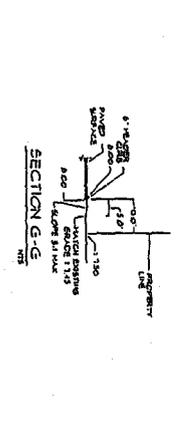
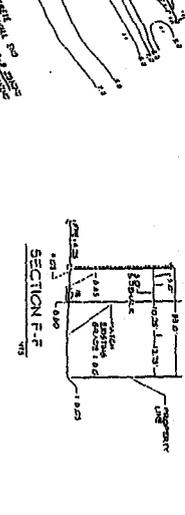
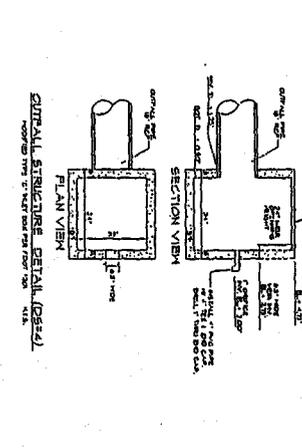
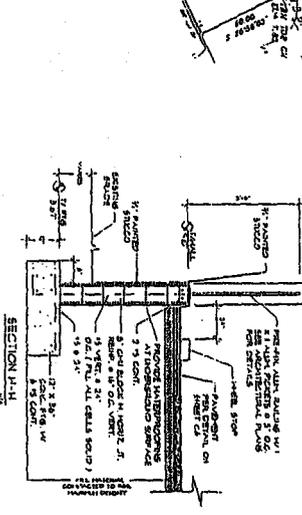
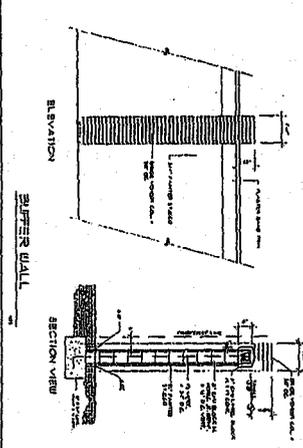
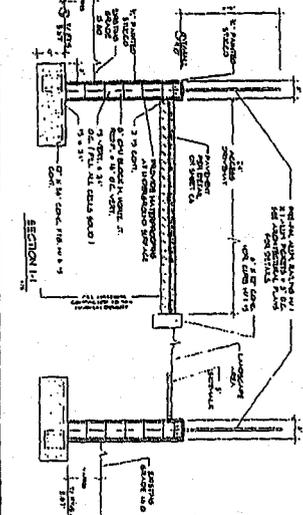
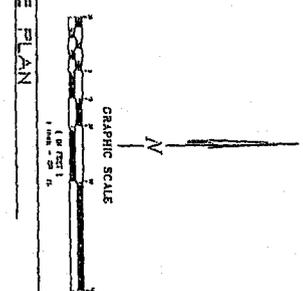


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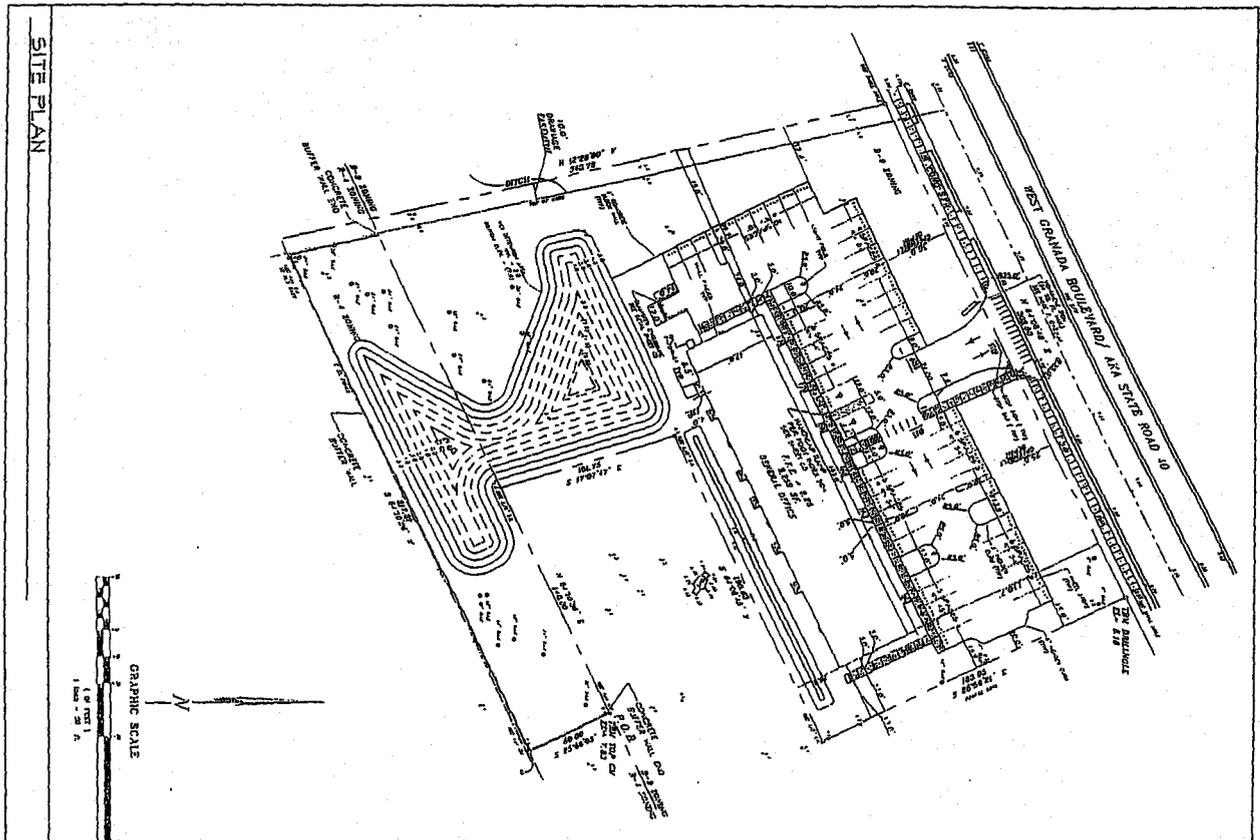
PAVING, GRADING & DRAINAGE PLAN

- NOTES:
1. SEE ALL DIMENSIONS AND NOTES ON ALL SHEETS OF THIS PROJECT.
 2. ALL DIMENSIONS ARE TO CENTER UNLESS OTHERWISE NOTED.
 3. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND LOCATIONS OF ALL UTILITIES AND STRUCTURES PRIOR TO CONSTRUCTION.
 4. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF ALL APPLICABLE CODES AND REGULATIONS.



<p>MAI SCHEDULED ENGINEERING 2000 First St., Suite 300 Melbourne, FL 32901 www.maiengineers.com</p>	<p>ORMOND BEACH COMMERCIAL COMPLEX</p>		<p>Date: 1/20/04 Sheet: 05-272</p>	<p>Engineer: R. Eckman No.: 0017019</p>	<table border="1"> <tr><th>NO.</th><th>DATE</th><th>DESCRIPTION</th></tr> <tr><td>1</td><td>01/20/04</td><td>ISSUED FOR PERMIT</td></tr> <tr><td>2</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>3</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>4</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>5</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>6</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>7</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>8</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>9</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>10</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>11</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>12</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>13</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>14</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>15</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>16</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>17</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>18</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>19</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>20</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>21</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>22</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>23</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>24</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>25</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>26</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>27</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>28</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>29</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>30</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>31</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>32</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>33</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>34</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>35</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>36</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>37</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>38</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>39</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>40</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>41</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>42</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>43</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>44</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>45</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>46</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>47</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>48</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>49</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> <tr><td>50</td><td>02/10/04</td><td>REVISED PER COMMENTS</td></tr> </table>	NO.	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Instrument # 2008-148340 # 11
 Book : 6258
 Page : 1108
 Diane M. Matousek
 Volusia County, Clerk of Court



GENERAL NOTES:

1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING THE CITY OF ORMOND BEACH PERMITS AND APPROVALS FOR CONSTRUCTION OF THIS PROJECT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING THE CITY OF ORMOND BEACH PERMITS AND APPROVALS FOR CONSTRUCTION OF THIS PROJECT.

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<p>MAA Architecture Engineering Construction 2200 Ponce de Leon Ave., Suite 300 Ormond Beach, FL 32136 (321) 977-2088 www.maaarchitect.com</p>	<p>ORMOND BEACH COMMERCIAL COMPLEX</p> <p>FLORIDA</p>	<p>David T. Stover 200808</p> <p>Kenneth R. LeVine 11/01/2008</p>	<p>DATE</p> <p>BY</p> <p>CHKD BY</p> <p>APP'D BY</p> <p>DATE</p> <p>BY</p> <p>CHKD BY</p> <p>APP'D BY</p>
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STAFF REPORT

City of Ormond Beach Department of Planning

DATE: May 5, 2010

SUBJECT: Mural at 45-49 West Granada Boulevard (Caffeine's)

APPLICANT: Dorian Burt, Authorized Agent for the Highlander Corporation

NUMBER: 10-0000100

PROJECT PLANNER: Steven Spraker, AICP, Senior Planner

INTRODUCTION:

This is a request for a Special Exception by Dorian Burt, authorized agent of the property owner, Highlander Corporation, to allow the existing murals painted on the northern and western walls of the building to remain. There are no other building or site improvements proposed with this application.

BACKGROUND:

Caffeine's is a restaurant at 45-49 West Granada Boulevard that is located in a building owned by the Highlander Corporation. The site where Caffeine's is located has a rear area of 60' by 50' that was used for parking. The City has become aware of two actions at that address that were performed without the necessary City permits: 1) the parking area in the rear was converted to an outdoor seating area without the review or approval of the Site Plan Review Committee, and 2) a series of murals along the western and northern building walls.

The property owner has provided City staff evidence of a shared parking agreement that has brought the conversion of the parking area into compliance with the city's requirements. The property owner also requested a determination of the Planning Director regarding the murals, which was subsequently issued on March 22, 2010 and is attached as Exhibit "A". The determination stated that the mural series were not considered to be signs, but that there was no provision in the Land Development Code (LDC) to allow the murals.

The Land Development Code does not address murals to either allow or prohibit them. Based on the fact that the Land Development Code does not address murals, or expressly prohibit murals, Section 2-01.B.7 of the Land Development Code allows applicants to apply for murals by Special Exception to allow a use not otherwise stated in the Land Development Code.

The applicant has indicated that the Ormond Beach Main Street Design Committee would review and provide a recommendation at their May 10th meeting. Staff will

provide a verbal update of the input provided at this meeting to the Planning Board at the May 13th Planning Board meeting.

Surrounding Uses with Land Use and Zoning Designations:

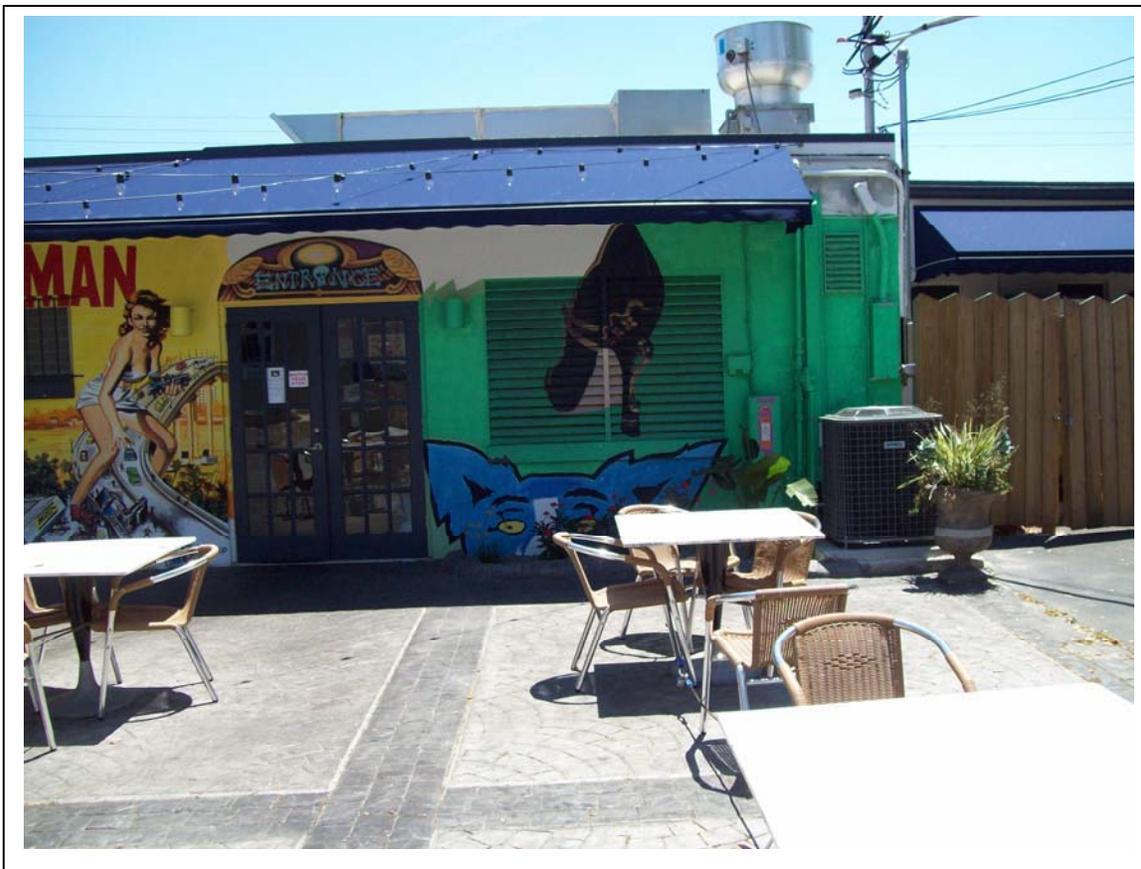
		Use	Future Land Use Designation	Zoning
North	1	Multi-Family Residential	"Commercial"	B-4 (Central Business)
South	2	Retail	"Commercial"	B-4 (Central Business)
East	3	Restaurant	"Commercial"	B-4 (Central Business)
West	4	Office	"Commercial"	B-4 (Central Business)

Site Aerial



Mural Series Pictures:





ANALYSIS:

The City requires that all non-residential structures obtain a paint permit to comply with the color standards of the Land Development Code as shown below. As discussed earlier, no paint permit application has been received for this building.

Land Development Code Sections regarding colors on non-residential buildings.

Section 2-42.C of the Land Development Code states:

C. **Building Colors.** Building colors for non-residential buildings shall meet the following criteria:

1. Selected colors shall be pastel, earth or natural tones.
2. Stripes and geometric patterns shall be specifically prohibited. Geometric patterns may be approved by the City Commission where there are extensive areas of facade, the patterns are part of an overall architectural theme, and colors are subtle.
3. A color or scheme which is directly inherent to a unique recognized architectural style, but not otherwise in compliance with this Section may be reviewed and approved by the City Commission.
4. A paint application permit is required for non-residential uses.

Section 3-68.A.5 of the Land Development Code states:

5. **Colors.** Colors of all building surfaces shall comply with the following requirements:
 - a. Colors shall be earth-tones and pastels. The selection of earth-tones shall be in accordance with the definition provided in this code. The selection of pastels shall be limited to those colors having a minimum white content of 90 percent (measured by spectrum, not volume). The requirement for earth-tones and pastels shall not apply to colors commonly found in natural materials such as brick or stone, unless such material has been artificially colored in a manner which would be contrary to the intent of these regulations.
 - b. Other colors, including pure white but excluding fluorescents, shall only be permitted as accent colors, not to exceed twenty percent (20%) of the surface area of any one elevation.
 - c. A color or color scheme which is directly inherent to a unique recognized architectural style, but not otherwise in compliance with this section may be permitted through the Special Exception review process.
 - d. Building colors shall be consistent around the entire building. Exceptions to this provision may be made for portions of a structure that are not exposed to the general public.

Murals in Ormond Beach:

Beginning in 1998, the City began a review of murals that was a result of the Quality Inn, 251 South Atlantic Avenue, painting a parrot on the hotel facing the beach. The Planning Board discussed the topic of murals six times between 1998 and 2000. The focus of these meetings included (1) distinguishing the differences between a "sign" and "mural"; (2) size and scale of murals; (3) compatibility; (4) content; (5) design criteria, appearance, materials, durability and maintenance; (6) permitted locations; (7) locations on buildings; (8) permit process and variances; (9) violations and enforcement; and (10) nonconforming murals. On March 9, 2000, the Planning Board recommended no further action on murals. Members of the Board stated "murals would create another obligation for City government to not only review the content, but also ensure continued maintenance."

In December of 2001, the City Commission directed staff to draft a mural ordinance. The City Commission at the time did not state that they desire to implement a mural policy, only to see how such an ordinance would look. The Quality of Life Board (QLB) reviewed the final draft mural ordinance at their April 4, 2002 regular meeting. The QLB reviewed the mural ordinance and voted 9-1 that the City should not pursue an amendment to the LDC to allow murals. The Board believed the general idea of murals is a good concept and they wish to review the subject at some point in the future; however, they did not believe that to be the time to implement a mural ordinance. The concerns expressed by the QLB were similar to the issues discussed at the March 14, 2002, Planning Board meeting. Two issues were highlighted (potential legal ramifications and the inability to regulate the content of murals) as reasons why the City should not pursue a mural amendment to the LDC.

The MainStreet organization reviewed the issue of murals at their regular meeting on April 8, 2002. The focus of the MainStreet meeting was the City's image and how the image would be impacted by murals. Members stated that they were concerned with the potential of improper content and were concerned that murals could reduce the quality image that Ormond Beach has worked to portray. Several members were concerned with the issue of maintenance of the murals. Other members viewed murals as a method of improving public art and improving the tourism value of the City. The MainStreet organization voted 6 to 5, with several members abstaining to oppose the concept of allowing murals in Ormond Beach.

The Planning Board reviewed the mural ordinance at their meeting on March 14, 2002, as a discussion item. The Planning Board's discussion focused on four major points:

- Legal ramifications (attempting to regulate art);
- Additional signage for businesses;
- Content;
- Maintenance issues.

The Planning Board reviewed the Land Development Code amendment to allow murals at their April 11, 2002 meeting. The Board voted 6 to 1 to disapprove the proposed mural ordinance. The reasons for disapproval focused on the issues discussed at the March Planning Board meeting. Two areas were stressed: the inability of the City to regulate content and the potential for additional advertising for businesses.

The City Commission did not approve the proposed Land Development Code amendment to allow murals under certain conditions.

Special Exception Criteria

Section 2-56 of the Land Development Code outlines the general criteria for all Special Exception approvals:

- A. *Off-street parking loading and service areas shall be provided and located such that there is no adverse impact on adjoining properties, beyond that generally experienced in the district.***

The mural series will not impact the project parking.

- B. *Required yards, screening or buffering, and landscaping shall be consistent with the district in general, the specific needs of the abutting land uses, Chapter 3, Article 1, and other applicable provisions of this Code.***

The mural series will not impact site landscaping.

- C. *Size, location, or number of conditional or Special Exceptions in an area shall be limited so as to maintain the overall character of the district in which said conditional or Special Exceptions are located.***

There have been several Special Exceptions in this portion of the Downtown redevelopment area. This request will not negatively impact the overall character of the area. Murals associated with an outdoor seating area could benefit the Downtown redevelopment area by encouraging this type of restaurant use.

- D. *Hours of operation may be limited and the City may require additional information on structural design and site arrangement, to assure the compatibility of the development with existing and proposed uses in the surrounding area.***

There is not a need to restrict the hours of operation based on mural series request.

- E. *The Special Exception shall not generate hazardous waste or require use of hazardous materials in its operation without use of City-approved mitigative techniques.***

This Special Exception will not generate hazardous waste.

- F. *All development proposed as a Special Exception within or adjacent to a historic district shall be reviewed based on applicable criteria stated herein for residential, commercial or mixed use development and shall also comply with appearance and design guidelines for historic structures.***

The project is located in proximity to the Bushman building and the Rose Villa structure (not listed on the Local List, but historic by age). It is not expected that the murals would negatively impact any historic resource.

G. *Outdoor lighting shall have no spillover onto adjacent property or rights-of-way beyond the building site property line and the lumens shall not exceed two (2) foot-candles at the property line.*

The mural series will have no impact on the site lighting. .

CONCLUSION:

Per Section 1-17.E of the Land Development Code, “The Board may make a recommendation to the City Commission for approval, approval with conditions, or denial. Where the Board recommendation is for denial, the reason(s) for the denial shall be included in the motion. In making its recommendation, the Board shall consider the following findings, which shall be made by the City Commission in conjunction with the issuance of any Development Order subject to public hearing, other than rezonings”:

1. The proposed development conforms to the standards and requirements of this Code and will not create undue crowding beyond the conditions normally permitted in the zoning district, or adversely affect the public health, safety, welfare or quality of life.

The proposed use will not create undue crowding or adversely affect the public health.

2. The proposed development is consistent with the Comprehensive Plan.

The site has a Future Land Use designation of “Commercial”. The land use plan provides no direction for the use of murals within the City.

3. The proposed development will not adversely impact environmentally sensitive lands or natural resources, including but not limited to waterbodies, wetlands, xeric communities, wildlife habitats, endangered or threatened plants and animal species or species of special concern, wellfields, and individual wells.

The proposed development will not adversely impact environmentally sensitive lands or natural resources and is an existing developed site.

4. The proposed use will not substantially or permanently depreciate the value of surrounding property; create a nuisance; or deprive adjoining properties of adequate light and air; create excessive noise, odor, glare, or visual impacts on the neighborhood and adjoining properties.

It is staff's opinion that the mural series at this location would not negatively impact surrounding properties or cause depreciation. The location where the murals have been painted is not visible from any public right-of-way and one must be within the area of the Caffeine's restaurant to view the murals. The applicant has stated that

the murals, which are not visible from any right-of-way, create an interesting and lively atmosphere rather than looking at blank, unimaginative walls.

- 5. There are adequate public facilities to serve the development, including but not limited to roads, sidewalks, bike paths, potable water, wastewater treatment, drainage, fire and police safety, parks and recreation facilities, schools, and playgrounds.**

This request would have no impact on public facilities.

- 6. Ingress and egress to the property and traffic patterns are designed to protect and promote motorized vehicle and pedestrian/bicycle safety and convenience, allow for desirable traffic flow and control, and provide adequate access in case of fire or catastrophe. This finding shall be based on a traffic report where available, prepared by a qualified traffic consultant, engineer or planner which details the anticipated or projected effect of the project on adjacent roads and the impact on public safety.**

This request would have no impact on traffic patterns or concurrency.

- 7. The proposed development is functional in the use of space and aesthetically acceptable.**

The City Land Development Code establishes the regulations for the colors of non-commercial buildings, specifically Sections 2-24.c and 3-68.A.5. Both Sections allow for alternative painting schemes to be approved by the City Commission. The project did not apply for any paint permits or Special Exception until after the violation was determined to have occurred.

Staff can not find any basis to support the application within the framework of the Land Development Code. There are specific color restrictions established to maintain a certain quality of life within the City. The last time that the City reviewed this issue, there was a determination by the City Commission and a recommendation by the Quality of Life Board, Ormond MainStreet, and the Planning Board not to allow murals within the City.

The Land Development Code does not address murals to either allow or prohibit them. Based on the fact that the LDC does not address murals, or expressly prohibit murals, Section 2-01.B.7 of the LDC allows applicants to apply for murals by Special Exception. If murals were not to be permitted, the LDC should have been amended to state simply, "Murals are not permitted within the City of Ormond Beach."

If the Planning Board and City Commission believe murals should not be permitted, then the Land Development Code should specifically be amended to outlaw them. The Land Development Code does prohibit the painting of a sign on a building, however, what has been painted is not a sign. A sign can always be disguised as a mural, but mural is not always a sign.

If there is a desire to allow murals in the City, the Land Development Code should be amended to permit this activity and the subject property should be required to follow those guidelines.

8. The proposed development provides for the safety of occupants and visitors.

The application will have no impact on the movement of occupants and visitors.

9. The proposed use of materials and architectural features will not adversely impact the neighborhood and aesthetics of the area.

It was noted during the 2002 discussion of murals that it is easy to determine when a mural is a sign or has appropriate content at the extremes. Examples include a mural of whales or obscene images. However, as one moves to the middle of the spectrum, mural images become more difficult to define. The overall concern of the advisory boards was that Ormond Beach could have objectionable images placed on the commercial buildings and these images could offend individuals because everyone views art in different ways.

Staff does not believe that this individual series of murals will adversely impact the aesthetic of the area, however, there are no City standards to review mural applications and the existing work was performed without permits. It is difficult to determine the unintended consequences of murals and the cumulative impacts of murals if permitted.

10. The testimony provided at public hearings.

This application has not been reviewed in a public forum and no testimony has been provided.

RECOMMENDATION: It is expected that the application will be reviewed by the City Commission on June 22, 2010. As stated earlier, the Land Development Code is silent on the topic of murals and no standards exist. The Land Development Code does establish certain color restrictions as part of the overall vision for the quality of life for the City.

It is recommended that the application to allow the murals to remain be **DENIED** based on the fact that the murals exceed the limitations of the colors as established in Section 2-42.C.1 of the Land Development Code that requires colors to be pastel, earth or natural tones. Staff is also concerned with property and business owners performing improvements without permits and then once the violation is caught, applying to allow the unauthorized improvement. If the Planning Board and City Commission believe murals should not be permitted in the city, staff would suggest that the Land Development Code be amended to specifically state murals are not permitted.

If there is a desire to allow the mural series to stay, staff would recommend that a Land Development Code amendment be processed to establish the conditions for the placement of murals on buildings and that this project be required to comply with the established conditions.

Exhibit A

March 22, 2010
Planning Director
Determination



CITY OF ORMOND BEACH

Planning Department • 22 South Beach Street • Ormond Beach, FL 32174 • (386) 676-3238 • Fax (386) 676-3242

March 22, 2010

Ms. Dorian Burt PA
203 Pine Cone Trail
Ormond Beach, Florida 32174

Subject: Request for Determination: 45-49 W. Granada Boulevard (murals/signs)

Dear Ms. Burt:

The Planning Department received your application on March 12, 2010 on the above referenced subject. As I understand it, the murals painted on the rear walls of the building were done without permits and up to this time the City treated all murals as signs and painted wall signs are not permitted in the City. Your request is for the Planning Director to determine whether or not the paintings on the walls to the rear of 45-49 W. Granada Boulevard are in fact signs.

In arriving at my interpretation, I reviewed all the previous information available to this Department regarding wall painting as signs. In addition, I reviewed the Land Development Code (LDC) for applicable sections of the code.

Review of Mural History:

The subject of murals and whether or not murals are signs and if not signs, should they be permitted in Ormond Beach is long and torturous. Often the specific case referenced when murals were discussed was the "parrot" symbol on a wall at the Quality Inn beachside. The distinguishing factors in that case were that the Quality Inn used the parrot symbol in its billboard advertisement as well as having a lounge within the facility named the Parrot. In that particular case, I totally agree with Planning Director Donnelly's determination that the parrot symbol was a sign. However, in reviewing staff reports and memo's regarding murals as art or as signs, it appears that murals were considered to always be signs not because in fact they were signs. Enforcement difficulty and the fact if murals were not signs then Ormond Beach would have less regulatory control of the content if permitted seemed to guide the decision that all murals were signs. It is true the courts have been unfriendly to ordinances which attempt to regulate noncommercial content in violation of the freedom of speech provisions of the First Amendment. Consequently, based upon the content neutrality concerns the City could have put a provision in the Code that basically states, "murals are not permitted in the City of Ormond Beach." Such a statement would have ended discussions regarding murals. However, this was not done nor was it thought of in the recent sign amendments to the LDC.

Facts of the case:

The definition of sign in Section 1-22 of the LDC indicates there are 5 elements that are needed for a sign to be a sign: 1) Symbol or image; 2) advertises; 3) associated with a trademark or logo; 3) public visibility; and 5) attracts attention. The structure of the sentence indicates all five elements are needed. The LDC does not address murals except in criteria related to tattoo shops located at Section 2-57 (T)). In this very narrow use of the word murals, tattoos were seen as a symbol or image associated with the product of the business and therefore advertises making it a sign. Section 2-01 B (7) states where a use is not otherwise stated in the LDC, such use may be permitted by Special Exception. Where no definition of mural exists, the common definition of a mural is used. The common definition of a mural is: "A mural is any piece of artwork painted directly on a wall, ceiling or other large permanent surface." LDC Section 1-22 defines "use" as "the purpose for which land or a structure is designed, arranged, constructed, altered, converted, rented, or leased or intended to be occupied or utilized or for which it is occupied or maintained."

Premise:

If a mural is an image, advertises a logo to which a business is associated with, and it can be seen by the public and is large enough to attract attention, it is a sign. If a mural does not have these elements, then it is not a sign. While a sign can always be a mural, the reverse is not always true. A mural if determined not to be a sign is a use by definition.

Determination:

The murals located on the rear wall elevations of Caffeine's include images with a few words. The murals have no association with the material and/or eye logo's used in the literature that advertises Caffeine's music line up or its web page. The murals are free form and characterized by distorted geometric design elements containing bold colors with multiple but unrelated futuristic story lines. One image contains that of a giant woman in a white dress standing over a devastated highway which appears trampled upon with the words "Attack 50 year old woman." While an image or two are associated with a hostess and a serving tray, the overall theme of the murals are more visual provoking if anything rather than conveying a product or service. On the north elevation, there are a series of actual mirrors of the type one would find hanging over a bathroom sink. There is no discernable relationship between the painted murals and the restaurant's name or what service is performed. In other words, the same mural images could be found on another building that is not an eatery and the murals would not be out of place. The murals crudely reflect Art Deco design and actually would be more consistent with and further the Art Deco theme for the building under construction two doors to the east if better refined. The art is located to the rear of the building and can be seen by the public only after the public is already on site. For the most part, it is positioned and designed to provide the outdoor seating patrons a better ambiance than blank walls.

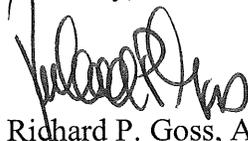
Consequently, the murals do not attract attention of the public. My determination is that Caffeine's murals are not signs. Murals by definition are uses and they are not addressed in the LDC. A mural if permitted to remain must comply with the Special Exception criteria for a use not otherwise specified in the LDC.

Summary:

The property owner is hereby directed to file a special exception application no later than April 12, 2010 regarding the existing wall murals which were placed on the exterior rear wall elevations without prior city approval. Failure to comply will cause this issue to be referred to the Special Master as a code enforcement matter. This interpretation should not be construed as an implied approval of the mural and that the Special Exception process is perfunctory. For example, Section 3-68 (5) indicates all exterior building surface colors must be earth-tones and pastels. So while a mural may not be a sign, there are provisions within the LDC that govern other elements of a mural.

Please consider this letter as my official interpretation. Should you have any questions regarding this interpretation, please do not hesitate to contact me.

Sincerely,



Richard P. Goss, AICP
Planning Director

Exhibit B

Applicant Letter

Description and Explanation of
Special Exception Request
45- 49 West Granada Blvd.
Ormond Beach, Florida

The Highlander Corp., owner of the real property located at 45-49 West Granada Blvd., is filing this Special Exception Application to allow the painting located on the Northern and Westerly walls of the building to be allowed to remain even though the colors are not all pastels and earthtones as currently required under the Land Development Code.

The Highlander Corp. recently filed a Request for Determination requesting that a determination be made that the painting (mural) was in fact not a sign and therefore did not violate the Land Development Code. A copy of that Determination Decision by Planning Director Ric Goss is attached showing that in fact the painting (mural) is not a sign.

The history of the Highlander Corp. in the Downtown is indeed a colorful one. The Highlander Corp. has been before the Planning Board, the Development Review Board and the City Commission on numerous occasions in a effort to preserve the authenticity of many of the historic buildings in the Downtown, including colors, such as the recently completed renovation of the Rose Villa located at 43 West Granada Blvd., the old Train Station building located at 15 West Granada Blvd. and the Buschman Building located at 25 West Granada Blvd.

It has long been generally understood that murals are not allowed in Downtown, nor anywhere in the City of Ormond Beach. That understanding is **INCORRECT**. The only reference to murals in our Land Development Code is contained under Chapter 2, Article IV, Section T-1. Tattoo Parlors - 5. "Murals and other graphic illustrations shall not be permitted on the exterior walls of buildings". The City has had several rewrites of the Land Development Code in the last ten years and has had every opportunity to insert language that does not allow painting (murals) anywhere else or on any other buildings and that has not been done.

So we are before you solely regarding the colors of the painting on the Northern and Westerly walls of 45 - 49 West Granada Blvd. The wall painting is not visible from either Granada or New Britain. The painting serves to enhance the patio area of Caffeine so that patrons are not looking a blank, unimaginative walls. The surrounding properties are owned by the Highlander Corp. as well as Granada Arts and Brian Hanson and there have been no complaints regarding the painting.

Most recently there has been much discussion regarding doing away with the four required architectural styles in the Downtown. Everyone has had enough of pseudo Mediterranean Buildings and their drab colorings. It would follow that the color chart for the Downtown will be revised as well. The current color chart for the downtown has been in effect for more than 20 years however special exceptions to those colors have been granted as outlined above and in other instances.

Part two of this Special Exception request deals with the decorative lighting fixtures on the Northerly and Westerly walls of 45-49 West Granada Blvd. These lighting fixtures not only provide light for the painting on the walls but also help to light up the outside patio area and parking lot. Since the painting is not a sign it follows that the lights which are complained of are not highlighting a sign nor are they contributing to advertising. The provide safety and decorative lighting and should be allowed to remain.

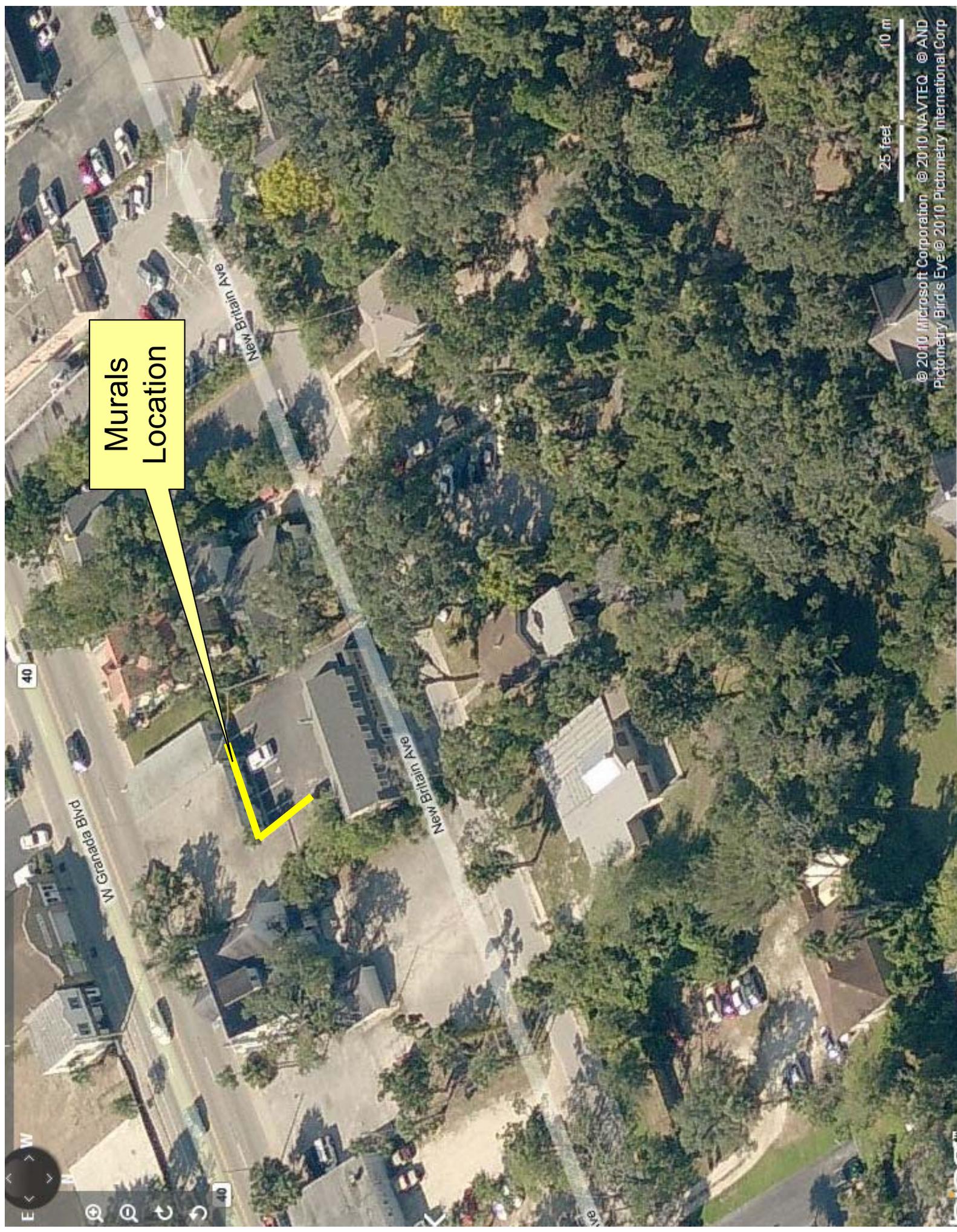
I will be bringing this Special Exception request before the Ormond Main Street Design Committee for their input and fully expect their support.

Respectfully submitted,

Dorian Burt, Agent and Project Coordinator - Highlander Corp.

Exhibit C

Mural Pictures



Murals
Location

40

W Granada Blvd

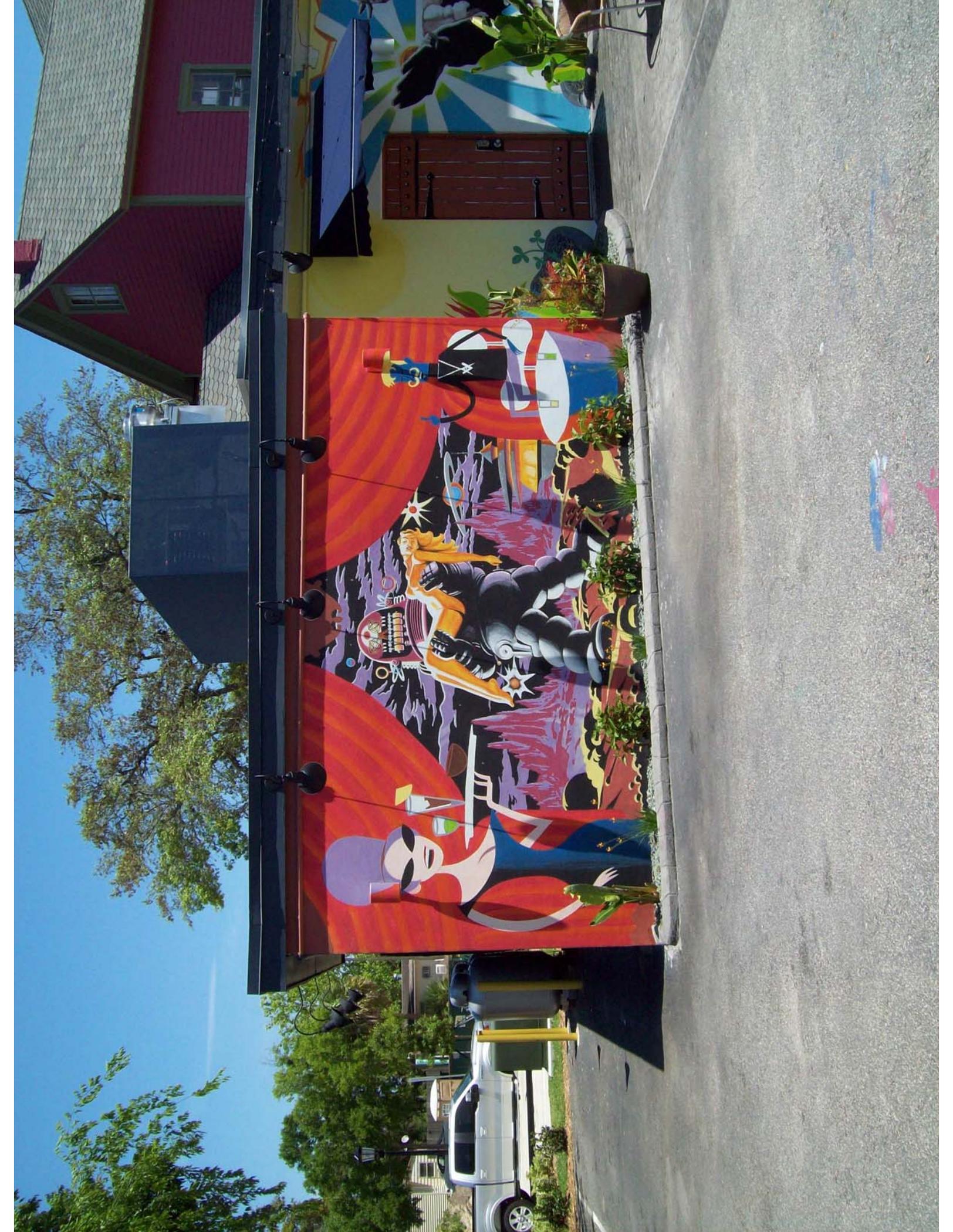
New Britain Ave

New Britain Ave

25 feet

10 m

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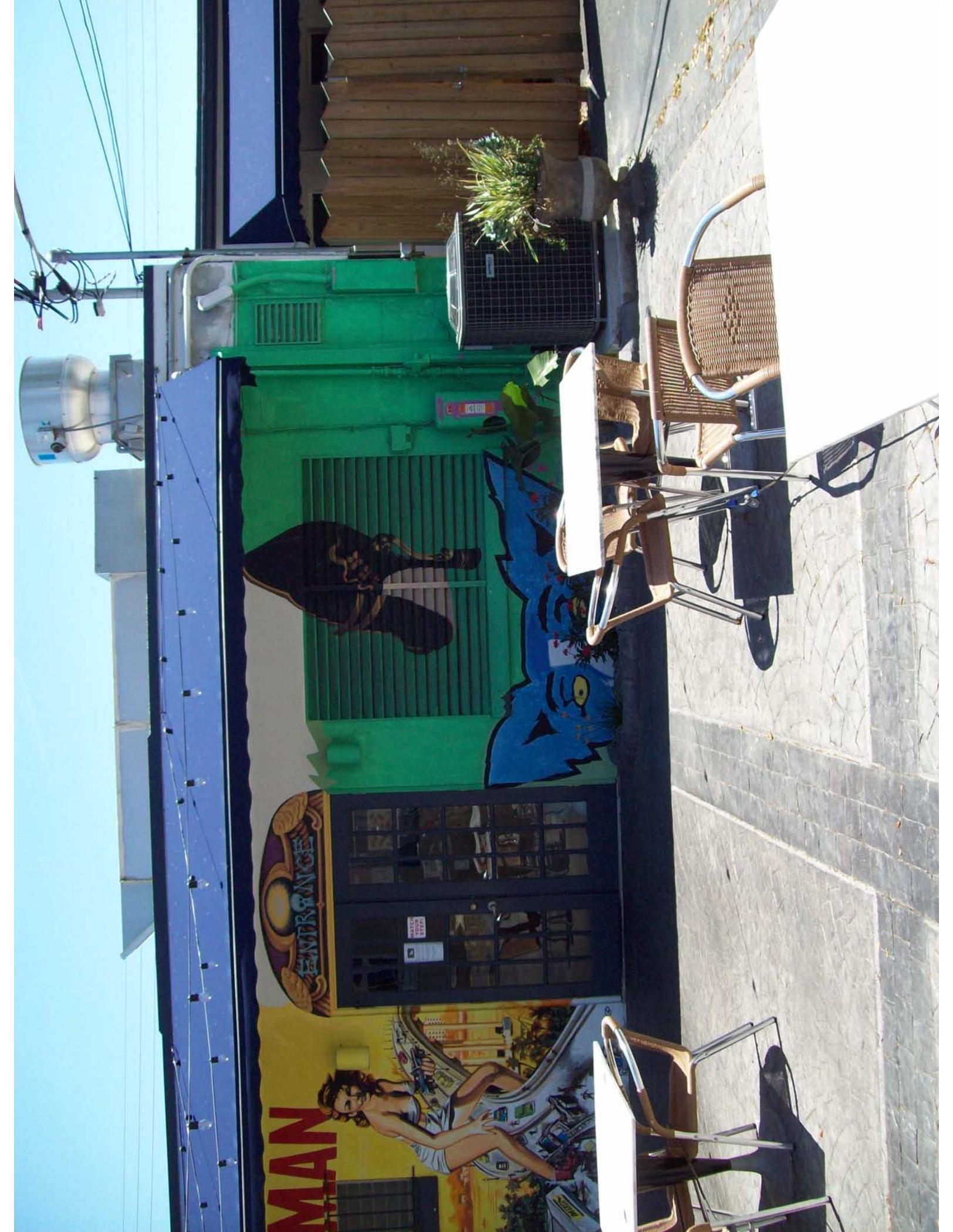




ENTRANCE

ATTACK WOMAN
50

WATCH
STEP!



MAN

ENTRANCE

NO SMOKING