



## ZONING STAFF REPORT

### ***FBC HOME CONCEPT SALES AND DISPLAY***

#### **Planning and Zoning Board**

---

**PROJECT NAME:** FBC HOME CONCEPT SALES AND DISPLAY  
**CASE TYPE:** VARIANCE  
**CASE NUMBER:** VAR2017-E002  
**PLANNING AND ZONING BOARD DATE:** AUGUST 20, 2019

#### **REQUEST AND RECOMMENDATION**

The applicant is requesting variances for a 0.4 acre site located on the west side of US 41 at the intersection of Trailside Drive. The variances are requested to allow the operation of a granite sales business. The use is allowed under the commercial zoning, but the business is currently operating under a code violation for not obtaining a "use permit". Variances are needed for several items that do not conform to the Land Development Code.

Staff has reviewed this project and is recommending denial. If the Planning and Zoning Board wishes to approve this request, conditions of approval should be included.

#### **APPLICATION SUMMARY**

##### **Applicant's Agent:**

Russell P. Schropp, Esq.  
Henderson, Franklin, Starnes & Holt Law Firm  
Property Owner CHHLCA Investments, LLC

##### **Request:**

Variances in the C-1 zoning district from the Land Development Code (LDC).

1. Section 33-351 Landscape Buffer - reducing width from 20 feet to 10 feet along US 41, and from 20 feet to 5 feet along Trailside Drive.
2. Sections 34-845 Setbacks for Buildings - reducing 25 feet rear and street building setback to a minimum of 15.5 feet from Trailside Drive, and from 25 feet to 14.4 feet from US 41.

3. Section 34-2192(a) Setbacks for Buildings - required 25-foot street setback for commercial buildings from edge of right-of-way or easement line for local streets and arterial or collector streets without frontage, to 15.5 feet from Trailside Drive and 14.4 feet from US 41.
4. Section 34-3004 Outdoor Display of Merchandise for Sale or Rent - requiring a 25-foot setback from a street right-of-way and a 10-foot setback from property line, to a 5-foot setback along Trailside Drive and a 10-foot setback along US 41.

**Location:**

The property is located at 20170 S. Tamiami Trail, Estero, Florida. The subject property STRAP number is 28-46-25-E1-U1866.2534.

**PROJECT HISTORY**

The property is zoned C-1 (Commercial), which is the original zoning for the property. Lee County previously approved a small 2-bay car repair service in 2010, and later an auto sales business in 2013. The auto sales operation went out of business and the property remained vacant until the site was leased to the FBC Home Concept Sales and Display in 2015. The deed for the property was recorded on April 16, 1980.

**CODE VIOLATIONS**

The site was leased to FBC Home Concept Sales and Display in 2015. The Village issued the property owner a violation (#16100011) in 2016 for not obtaining a use permit and for insufficient site buffer requirements. The code case was heard by the Special Magistrate and a Final Order was issued on October 19, 2017. The Final Order required the applicant to submit all necessary applications/paperwork for a use permit, variances and a Limited Development Order. As a condition of the Final Order, the applicant relocated the granite material out of the right-of-way and relocated the granite slabs to the center of the property and within the property line and setback limits.

The Special Magistrate conducted another hearing on July 18, 2019 and gave the applicant until October 16<sup>th</sup> to resolve this issue.

**SITE DESCRIPTION**

The site is a triangular lot located on the west side of US 41 with two road frontages (US 41 and Trailside Drive). The property to the south contains a landscape nursery, and the property to the west across Trailside Drive is a residential area.

The perimeter of the site is surrounded by a 6-foot high chain link fence. Several sections of the fence were placed off the property and within the right-of-way. A majority of the site consists of asphalt and concrete surfaces. Several areas of the asphalt encompassed some portions of the Trailside Drive right-of-way. An existing building with an extended canopy is located within the southerly section of the property. Currently, there are granite slabs stored/displayed at this location. There is also an accessory structure on site. In addition, the site contains a billboard. There is no landscaping on the property.

**ZONING DISTRICT**

C-1 (Commercial) district

## **FUTURE LAND CATEGORY**

The current future land use category is primarily Suburban with a small portion of Urban Community. The subject site is depicted as being in Urban Commercial in the adopted but not yet effective Comprehensive Plan.

## **PUBLIC INFORMATION MEETING**

A public information meeting for this application was held at the Planning and Zoning Board on November 14, 2017. One person from the public expressed concern about the amount of traffic on Trailside Drive. The Board commented that there is a long-range plan to beautify rights-of-way in the Village of Estero limits in the north and south and suggested coordinating with the Village.

## **LIMITED DEVELOPMENT ORDER AND USE PERMIT**

A Limited Development Order application was submitted to the Village of Estero on November 15, 2017 in order to comply with the Final Order which was issued by the Village of Estero Special Magistrate. The case is still under review pending the zoning variance application. A use permit is also pending the outcome of the variance requests.

## **STAFF ANALYSIS**

The granite sales operation is located on the corner of US 41 and Trailside Drive. The property is a triangular-shaped lot with two road frontages (US 41 and Trailside Drive). An existing 6-foot chain link fence is located along the perimeter of the site. The southerly section of the fence is located within the Trailside Drive right-of-way, which is now maintained by the Village. The northerly section along US 41 appears to be located on the property and outside the right-of-way.

The granite sales operation is categorized as Household and Office Furnishings, Group I, which is a permitted use in the C-1 zoning district. The applicant displays granite countertops outside for customers to purchase. Section 34-3004 of the LDC permits outdoor display and sale of merchandise in the C-1 district; however granite cutting and fabricating operations are not permitted. The granite operation has been told verbally by code enforcement staff that granite fabricating is not allowed on this site, as this activity had been observed in the accessory structure.

The site was leased to FBC Home Concept Sales and Display in 2015. The applicant was issued a violation (#16100011) for not obtaining a use permit and for insufficient site buffer requirements. A Final Order was issued by the Village of Estero Special Magistrate on October 25, 2017. The Final Order required the applicant to submit all necessary applications/paperwork for a use permit, variances and a Limited Development Order. The Special Magistrate held another hearing on July 18, 2019 and gave the applicant until October 16, 2019 to resolve this issue.

**VARIANCES** **Analysis of Variance Requests** **of Landscape Buffer** – The applicant requests a variance from Section 33-351, Landscaping Buffers, which requires a 20-foot wide Type D buffer between a commercial use and a residential use. The applicant proposes a 10-foot wide enhanced Type D buffer along the right-of-way fronting US 41, and a 5-foot wide Type D buffer along right-of-way fronting Trailside Drive.

While the width of the buffer is proposed to be reduced, the plantings will meet the requirements of a Type D buffer with a double row of shrubs along Trailside Drive and US 41. Additional trees are proposed to be planted above the required number of 5 per 100 linear feet. The tree and shrub heights will meet the Code.

The Applicant is also proposing a 6-foot high decorative aluminum fence along the perimeter of the site. The existing chain link fence depicted on the plan which encroaches into the right-of-way is proposed to be removed. The fence and buffer will help to screen the slabs once the landscaping has grown in, but the height of the slabs could exceed the height of the fence, so the slabs may be partially visible from the roadway.

The applicant has indicated that the variance is justified (see attached) due to the existing non-conforming lot. The lot is small and the triangular shape makes it difficult to provide the required buffers and also provide the display area requested for the granite slabs.

- 2. Reduced Setback for Existing Building** – The applicant requests a variance from a 25-foot street setback from the edge of right-of-way to 15.5 feet from Trailside Drive to the building, and 14.4 feet from US 41 to the existing carport which is attached to the building.

The applicant has stated that; *“Under 34-2192(b)(2)b.2 of the Land Development Code, there is a reduction in the required street setbacks for corner lots recorded prior to January 28, 1983, which have a lot width of less than 100 feet. For corner lots that meet this description, and that abut a local street and a street of higher classification, the street setback for the local street may be reduced to 15 feet”.* (See attached)

This Code section would not apply to US 41, and a variance is still needed for Trailside Drive, a local street, because the setback is 14.4 feet.

- 3. Street Setbacks for Buildings** – The applicant requests a variance from a required 25-foot street setback for commercial buildings from edge of right-of-way or easement line for local streets and arterial or collector streets without frontage, to 15.5 feet from Trailside Drive and 14.4 feet from US 41.

This is essentially the same variance as described above. Request 2 is for the rear setback, while request 3 references the street setback. The street setback is the applicable portion of the Code.

- 4. Outdoor Display Setback** – The applicant requests a variance from Section 34-3004(a), Outdoor Display of Merchandise for Sale, which requires a 25-foot setback from a street right-of-way and a 10-foot setback from property line requirements for the open display of merchandise. The applicant proposes a 5-foot outdoor display setback from the Trailside Drive right-of-way and a 10-foot outdoor display setback from the US 41 right-of-way for placement of granite slabs.

The applicant requested this variance to allow the slabs to be placed directly behind the 10-foot and 5-foot buffers.

Currently the applicant is using the southeasterly portion of the site for outdoor display of granite slabs. The submitted site plans (Landscaping Plan and Variance Site Plan) show a more limited location for the display area.

The applicant has stated that; *“Under 34-2192(b)(2)b.2 of the Land Development Code, there is a reduction in the required street setbacks for corner lots recorded prior to January 28, 1983, which have a lot width of less than 100 feet. For corner lots that meet this description, and that abut a local street and a street of higher classification, the street setback for the local street may be reduced to 15 feet”.*

This section of the Code is not applicable to the outdoor display of merchandise.

## **FINDINGS AND CONCLUSIONS**

All of the following criteria listed in Section 34-145(3)(a-e) of the Land Development Code must be met before a variance can be granted:

- *There are exceptional or extraordinary conditions or circumstances that are inherent to the property in question and whether those exceptional or extraordinary conditions or circumstances create a hardship on the property owner.*
- *The exceptional or extraordinary conditions or circumstances are not the result of actions of the property owner taken subsequent to the adoption of the Ordinance.*
- *The variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property.*
- *The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.*
- *The condition or situation of the specific piece of property, or the intended use of the property, for which the variance is sought is not of a general or recurrent nature so as to make it more reasonable and practical to amend the ordinance.*

Staff is recommending denial of the variance requests. Although the lot is an irregular triangular shaped parcel, the applicant has not provided sufficient justification to meet its burden to prove it has met all of the variance criteria. Instead, the applicant has created the need for the variances by maximizing the proposed use of the lot. There is no evidence that the owner has an unreasonable burden caused by the regulation. In fact, the owner apparently has a current reasonable use of the property because a billboard is situated on the property

## **ATTACHMENTS**

1. Variance Site Plan (dated May 9, 2019)
2. Conceptual Landscape Buffer Plan (dated February 22, 2019)
3. Photographs of Site
4. List of Variances Requested and Applicants Justification (Revised 2-20-19)
5. Code Violation Documents