

ATTACHMENT 3

VILLAGE OF ESTERO, FLORIDA

IN RE: CHHCLA INVESTMENTS, LLC

Petitioner.

REQUEST FOR RELIEF UNDER THE FLORIDA LAND USE AND ENVIRONMENTAL DISPUTE RESOLUTION ACT

TO: MAYOR BILL RIBBLE, ESTERO VILLAGE COUNCIL
9401 CORKSCREW PALMS CIRCLE
ESTERO, FL 33928

Petitioner, CHHCLA INVESTMENTS, LLC (hereinafter "Petitioner") by and through its undersigned counsel, hereby initiates a proceeding under the Florida Land Use and Environmental Dispute Resolution Act, §70.51 F.S. (the "Act"), and requests that the Village of Estero (the "Village") provide relief under the Act, including forwarding this request for relief to a special magistrate, selected by agreement of the Petitioner and the Village. In support thereof, the Petitioner states as follows:

Background

Petitioner is the record owner of the property, structures, and appurtenances located at 20170 South Tamiami Trail, Lee County, Estero, Florida 33928, an approximately 17,425 square foot parcel, having STRAP Number 28-46-25-E1-U1866.2534, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"). The Property is zoned C-1 and is designated as Suburban on the future land use map, both of which accommodate a variety of commercial uses.



As defined in the Estero Land Development Code (the “LDC”), the Property has been a lot of record since at least 1980. The building on the Property was constructed in 1960 and has been in the same configuration since at least 1966, as depicted by the Lee County historic aerial photographs attached hereto as Composite Exhibit “B.” In accordance with the provisions of the LDC, the building is and should be treated as a legal nonconforming structure on a legal nonconforming lot.

In 2016, Petitioner leased the Property to NAP Equity, LLC (the “Tenant”) for the operation of a granite and marble retail business. In late 2016, subsequent to full execution of the lease between Tenant and Petitioner, Tenant began operating the business and was cited with a Notice of Violation (discussed in greater detail below) for failing to obtain a use permit. Tenant and Petitioner expended substantial time and resources in an attempt to obtain the approvals for a use permit.

In 2017, in an attempt to comply with the Village’s request to obtain the variances that would ultimately allow for the issuance of a use permit, Petitioner submitted an application for four (4) variances, which were heard, and denied, by the Village of Estero Planning and Zoning Board (the “PZB”) on August 20, 2019. A copy of the PZB’s resolution of denial is attached as Exhibit “C.” The four requested variances included: (1) a variance to reduce the 20-foot landscape buffer, (2) a variance to reduce the side and rear setbacks, (3) a variance to reduce the setbacks from the edge of the right-of-way, and (4) a variance for the outdoor display of merchandise for sale or rent (hereinafter collectively the “Variances”). The Variances were requested based on the Village’s decision that Tenant would need a development order and variances in order to obtain a Use Permit for its granite and marble retail business. Petitioner takes the position that the Property meets the criteria for the Variances for the following reasons:

1. The lot has been a legal lot of record in the same configuration since at least 1980, and the structure on the lot has been in the same configuration since at least 1966. The building is a legal nonconforming structure located on a legal lot of record, both of which pre-date any formal zoning regulations by Lee County. Accordingly, the lot and structure should not be subject to the setback requirements in the current LDC until such time the building is destroyed, or substantially repaired or reconfigured.
2. The unique configurations of the Property and the structure are not a result of Petitioner's actions. As previously stated, the building has been in the same configuration since at least 1966 and the lot has been in the same configuration since at least 1980. Petitioner acquired the property in 2014 and has not made any substantial changes to the configuration of the Property or building. Therefore, the hardships that stem from the configuration of the lot and building are not the fault of Petitioner.
3. The Petitioner has not created the hardship requiring the variance. Petitioner only applied for the Variances in an attempt to legitimize an already legal nonconforming structure once the current Tenant was denied a use permit. Petitioner has not increased the footprint of the building, increased the density or intensity of the building, or attempted to use the building for a use that is not permitted in a commercial zoning district under the LDC. Rather, Petitioner is simply trying to utilize the building on the Property to the same extent as its historical use.
4. The Variances are the minimum required to allow reasonable use of the Property in that the Variances merely recognize the existing configurations and structures on the Property.

5. There will be no harm to the health, safety, or welfare of the public by granting the Variances. In fact, if granted, the Variances would amount to a substantial improvement over the current condition of the property as it relates to the current buffers versus the proposed buffers.

The unique characteristics of the Property are not generally applicable to other properties within the Village, and a sustained denial of the requested Variances would render the Property devoid of any reasonable economic use. Granting the Variances would essentially be a legal formality by the Village to legitimize a structure and lot that have been treated as legal nonconforming by Lee County since the building was built.

The denial of the Variances not only negatively impacts the proposed use of the Property in that the Tenant has not been able to obtain the proper use permit, but the denial of the Variances impacts *any* proposed use of the property because the configuration of the Property makes it virtually impossible to comply with LDC requirements.

If the Variances are not granted, or the Village does not recognize the legal nonconforming status of the structure and lot, then the existing structure would be without any reasonable economic use as, presumably, no use permit would be issued by the Village. Being that the structure itself is the problem, and not the proposed use within the structure, the denial of the Variances or failure to recognize the structure's nonconforming status essentially eliminates any potential use of the building. At that point, the only way to comply with the current LDC would be to demolish the existing building and build a structure that is compliant with the existing setbacks. This presents a challenge because of the configuration of the lot. The Property is unique in that it is a narrow, triangular shaped parcel with major arterial frontage on the east side along Tamiami Trail and additional street frontage on the west side along Trailside Drive.

The majority of the Property between the property line and the actual pavement of the roadways is right-of-way, which cannot be acquired by Petitioner in an attempt to make the lot larger. As a result, the majority of the narrow parcel is subject to setbacks that, if brought into compliance with the current LDC, would leave an approximately 4,000 square foot triangular portion available for development. This would create an undue burden for Petitioner.

Code Enforcement Action

As noted above, the Village initiated a code enforcement action against Petitioner in 2016 for, among other things, failing to have a use permit to operate a business for Tenant's granite and marble retail business. Petitioner and its Tenant were directed to obtain a development order and variances for the structure that did not meet required setbacks under the LDC but which should have been treated by the Village as a legal nonconforming structure on a legal nonconforming lot of record. The code enforcement action was continued multiple times while Petitioner and Tenant pursued these variances, which were ultimately denied by the PZB and are now on appeal to the Village Council. However, on July 18, 2019, an order was entered by the Special Magistrate for code enforcement actions (copy attached as Exhibit "D") providing that a fine of \$250 per day would commence if the violation was not remedied by October 16, 2019. A hearing to determine compliance has been scheduled for October 17, 2019, and notice posted by the Village on October 7, 2019, such posted notice attached as Exhibit "E". The imposition of fines by the code enforcement action would be a further unreasonable and unfair burden on the use of the Property for which relief under the Act is appropriate.

Proposed Use of the Property

The Property is zoned C-1 and can accommodate a variety of commercial uses. Historically, the Property has been used as a used car sales lot. Car repair and boat sales were also permitted by previous use permits and development orders issued by Lee County. Most recently, the Property was to be used for the operation of a granite and marble retail business. Petitioner recognizes the advantageous location of the Property in that the Property has about 200 feet of frontage on a major arterial road: Tamiami Trail. Therefore, Petitioner wishes to use the Property for any use that is permitted under the current zoning for the Property.

WHEREFORE, based upon the foregoing, Petitioner requests relief under the Florida Land Use and Environmental Dispute Resolution Act, including the forwarding of this Petition to a special magistrate for proceeding required by that Act, together with any and all relief permitted under that Act.

CERTIFICATE OF SERVICE

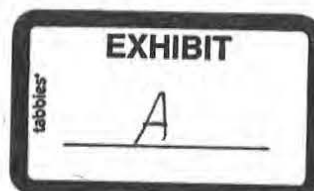
I HEREBY CERTIFY that the original Petition and one (1) copy was served this 14th day of October, 2019, by e-mail and hand delivery to: Bill Ribble, Mayor, Estero Village Council, 9401 Corkscrew Palms Circle, Estero, Florida 33928, and one (1) copy to the Village Attorney's Office.

Russell P. Schropp
Kaylee A. Tuck
HENDERSON, FRANKLIN, STARNES & HOLT, P.A.
1715 Monroe Street
Fort Myers, Florida 33901
Telephone: (239) 344-1100
Facsimile: (239) 344-1535
Attorneys for Petitioner

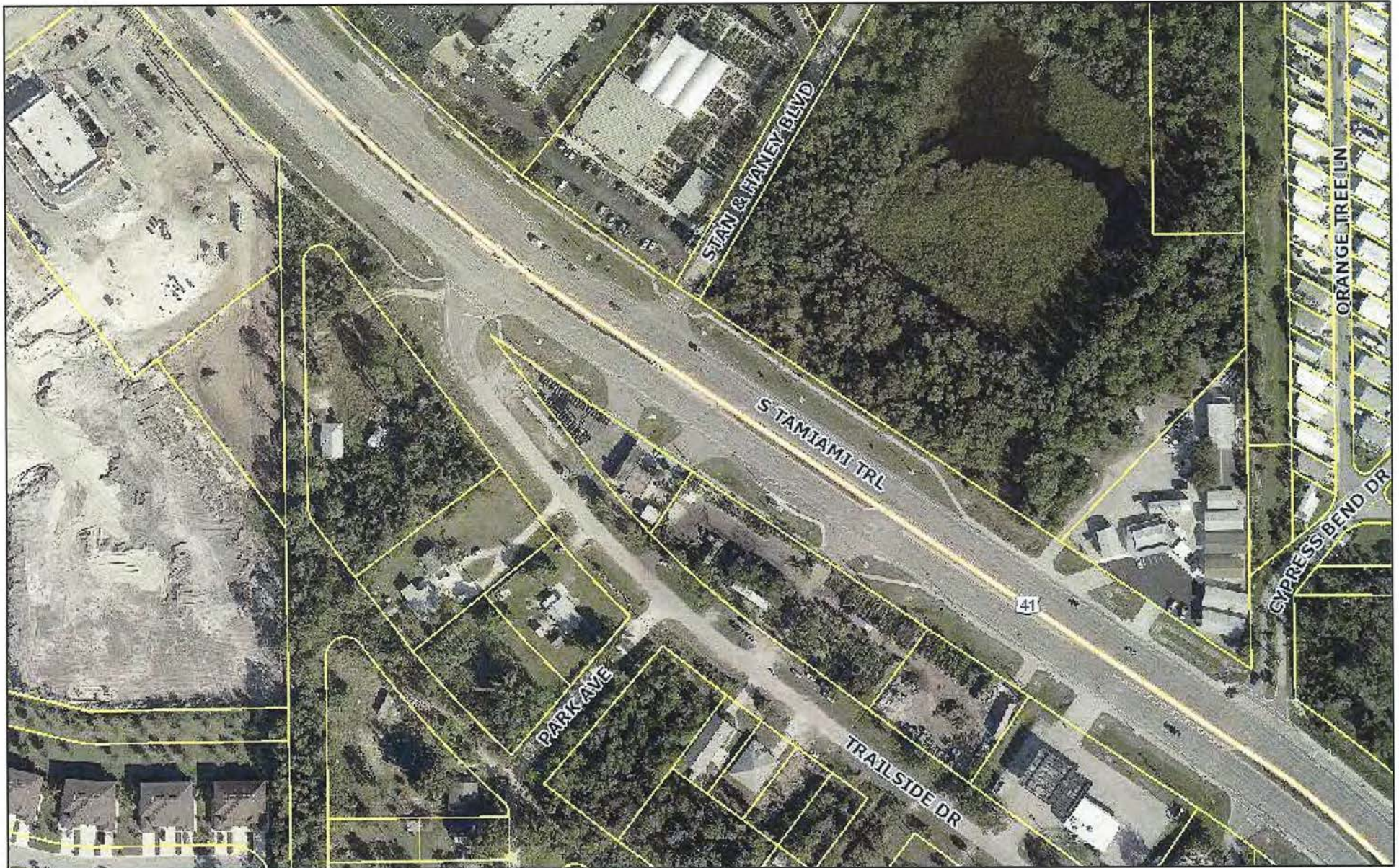
By: Kaylee Tuck
Kaylee A. Tuck

EXHIBIT "A"

A TRACT OR PARCEL OF LAND LYING IN THE EAST 1/2 OF THE NORTHWEST 1/4, SECTION 28, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, WHICH TRACT OR PARCEL IS DESCRIBED AS FOLLOWS:
FROM THE NORTHEAST CORNER OF SAID FRACTION OF A SECTION RUN SOUTH 00°39'00" EAST ALONG THE EAST LINE OF SAID FRACTION FOR 1559.38 FEET TO A SOUTHEASTERLY PROLONGATION OF THE CENTERLINE OF TAMiami TRAIL (STATE ROAD NO. 45); THENCE RUN NORTH 56°02'00" WEST ALONG SAID PROLONGATION FOR 46.06 FEET; THENCE RUN SOUTH 33°58'00" WEST, PERPENDICULAR TO SAID CENTERLINE FOR 68.00 FEET TO AN INTERSECTION WITH THE SOUTHWESTERLY LINE OF SAID TAMiami TRAIL; THENCE RUN NORTH 56°02'00" WEST ALONG SAID SOUTHWESTERLY LINE FOR 832.41 FEET TO A STEEL PIN AND THE POINT OF BEGINNING.
FROM SAID POINT OF BEGINNING RUN SOUTH 33°58'00" WEST, PERPENDICULAR TO SAID SOUTHWESTERLY LINE, FOR 103.84 FEET TO A STEEL PIN ON THE MAINTAINED, CURVED NORTHEASTERLY LINE OF THE OLD ALIGNMENT OF SAID TAMiami TRAIL; THENCE RUN NORTHWESTERLY ALONG SAID NORTHEASTERLY LINE, ALONG THE ARC OF A CURVE TO THE RIGHT OF RADIUS 1095.92 FEET (CHORD BEARING NORTH 40°17'45" WEST) FOR 119.71 FEET TO A POINT OF TANGENCY; THENCE CONTINUE ALONG SAID NORTHEASTERLY LINE NORTH 37°10'00" WEST FOR 230.06 FEET TO AN INTERSECTION WITH SAID SOUTHWESTERLY LINE OF SAID TAMiami TRAIL, PASSING THROUGH A STEEL PIN AT 31.53 FEET ALONG SAID LINE;
THENCE RUN SOUTHEASTERLY ALONG SAID SOUTHWESTERLY LINE, ALONG THE ARC OF A CURVE TO THE LEFT OF RADIUS 2932.79 FEET (CHORD BEARING SOUTH 54°44'10" EAST) FOR 132.83 FEET TO A CONCRETE MONUMENT ON A POINT OF TANGENCY; THENCE RUN SOUTH 56°02'00" EAST ALONG SAID SOUTHWESTERLY LINE FOR 200.08 FEET TO THE POINT OF BEGINNING, PASSING THROUGH A CONCRETE MONUMENT AT 55.08 FEET ALONG SAID LINE.
BEARINGS HEREINABOVE MENTIONED ARE DERIVED FROM THE CENTERLINE SURVEY FOR STATE ROAD NO. 45.



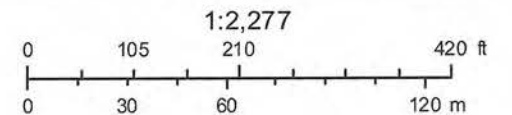
GeoView Map



October 14, 2019

Air Photos: 2019 Hi-Res (4 inch)

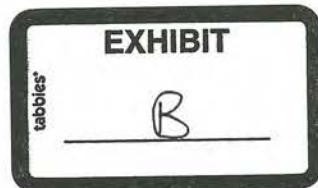
-  Hospital Locations
-  Library Locations
- School Locations**
-  School Locations



This map is NOT a legal land survey and should not be used or relied upon as such. No warranties, express or implied, are provided with the data, use, accuracy or interpretation.

Composite Exhibit B

2014 Aerial



Composite Exhibit B

1980 Aerial



Composite Exhibit B

1966 Aerial



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RESOLUTION NO. PZB 2019 – 07
VARIANCE 2017-E002

VILLAGE OF ESTERO, FLORIDA

WHEREAS, CHHLCA Investments, LLC has filed an application with the Village of Estero for variances from the Land Development Code for the **FBC Home Concept Sales and Display** business:

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. Section 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.

WHEREAS, the property is .4 acres, located at 20170 S. Tamiami Trail, Estero, Florida, on the west side of the intersection of US 41 and Trailside Drive. The subject property STRAP number is 28-46-25-E1-U1866.2534; and

WHEREAS, the subject property is designated Suburban and Urban Community on the Future Land Use Map in the Village of Estero Comprehensive Plan; and

WHEREAS, the property is zoned Commercial (C-1); and

WHEREAS, the business is currently operating under a code violation (#16100011) for not obtaining a “use permit”, and for insufficient site buffer requirements; and

WHEREAS, the proposed business is granite sales; and

WHEREAS, the applicant has also filed for a Limited Development Order and use permit; and



45 WHEREAS, under the provisions of Ordinance 2015-01 of the Village of Estero,
46 the Planning and Zoning Board has been delegated the authority to make determinations
47 with respect to variances that are not part of a rezoning request; and
48

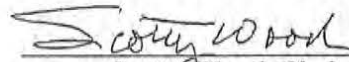
49 WHEREAS, the Planning and Zoning Board reviewed this request at a duly
50 noticed quasi-judicial hearing and finds:
51

- 52 1. The applicant has not provided sufficient justification to meet its burden to
53 prove that it has met all the variance criteria outlined in Section
54 34-145(3)(a-3) of the Land Development Code.
55
56 2. There are not exceptional or extraordinary conditions inherent to the
57 property that create a hardship on the property owner.
58
59 3. The applicant has created the need for the variances by maximizing the
60 proposed use of the lot.
61
62 4. The regulations do not cause an unreasonable burden, as the owner has a
63 current reasonable use of the property.
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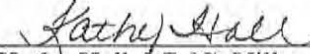
65 NOW, THEREFORE, the Planning and Zoning Board resolves that the variance
66 application shall be denied.
67

68 PASSED AND DULY ADOPTED this 20th day of August, 2019.
69

70 VILLAGE OF ESTERO, FLORIDA
71 PLANNING AND ZONING BOARD

72 
73 _____
74 Scotty Wood, Chairman

75 Attest:

76 By: 
77 Kathy Hall, MMC, Village Clerk
78

79 Reviewed for legal sufficiency

80
81 By: 
82 Nancy Stroud, Esq., Land Use Attorney
83

84 **Vote:**

85 Scotty Wood	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
86 Tim Allen, PhD	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
87 Anthony Gargano	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
88 Marlene Naratil	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
89 James Tatoes	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
90 John Yarbrough	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>



OFFICE OF THE SPECIAL MAGISTRATE
ORDER OF IMPOSITION OF FINE & CLAIM OF LIEN

Village of Estero
9401 Corkscrew Palms Circle
Estero, FL 33928

Case #: 16100011

Certified #:

Petitioner,

Vs

CHHLCA INVESTMENTS, LLC
6881 SANDALWOOD LANE
NAPLES, FL 34109

Respondent(s)

The Village of Estero Special Magistrate, having reviewed evidence and sworn testimony by Affidavit, enters the following Findings of Fact:

- 1. That the Village of Estero Special Magistrate did issue on the 16th day of October, 2017 a Final Order in the above captioned case commanding the Respondent to bring the violations specified in said Final Order into compliance or be subject to a fine in the amounts shown below commencing on the dates shown below plus an additional fine to cover costs incurred by the Village in the amount of \$404.50.

Ordinance/ Regulation	Violation Description/Correction	Order Date to Comply by	Date Complied	Daily Fine
Chapter 6 - BUILDINGS AND BUILDING REGULATIONS Section 6-111. - Statewide effectiveness; amendments. USE Permits	Use permits. A use permit, authorizing a use in accordance with the provisions of Chapter 34 of the Lee County Land Development Code, is required prior to occupancy or a change of occupancy of commercial or industrial zoned property.	10/16/2019		\$250.00



Ordinance/ Regulation	Violation Description/Correction	Order Date to Comply by	Date Complied	Daily Fine
CHAPTER 33 Sec 1523 - Buffers	All buffers must comply with section 10-416, except for the following: (a) Landscape buffers are not required between commercial uses. (b) If driveways and/or parking spaces are within 125 feet of a residential use a type F buffer per <u>section 10-416(c)</u> must be provided. (c) Type D right-of-way buffers must have a minimum ten foot width with five trees per 100 linear feet and a double staggered hedgerow.	10/16/2019		\$250.00

2. That said violations occurred on the following described real property situate, lying and being in the Village of Estero, Florida, to-wit:

FOLIO #: 284625E1U18662534

LEGAL DESCRIPTION: PARL IN E1/2 OF NE1/4 AS DESC IN OR 1426 PG 858

STREET ADDRESS: 20170 S. TAMIAMI TRL, ESTERO, FL 33928

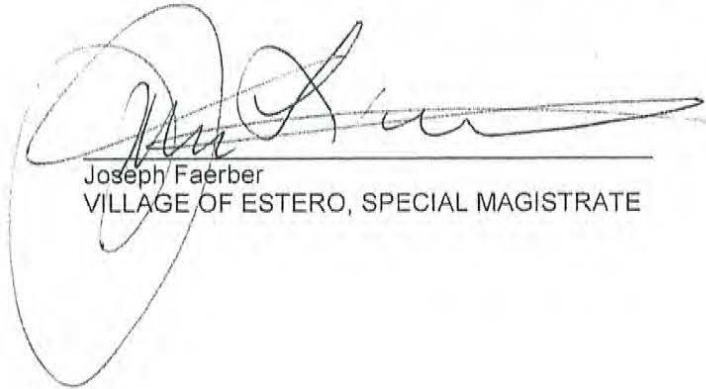
3. That the Respondent did not comply with the Final Order on or before the date specified therein. Upon complying with this Final Order, the Respondent **SHALL NOTIFY STANLEY KNIGHT**, The Code Enforcement Compliance Manager, who shall have the property inspected and notify the Special Magistrate Clerk if compliance has occurred.
4. A fine in the amounts shown above commencing on dates shown above is hereby confirmed and imposed. This fine shall continue to accrue until such time as the property is brought into compliance at which time the Respondent shall notify the Code Compliance Manager. **Additionally, a fine of \$0.00 to cover costs incurred in the prosecution of this matter is confirmed and imposed.**
5. The fine and costs shall constitute a lien against the above-described real property pursuant to Chapter 162, Florida Statutes and Article VI – Code Enforcement of the Village of Estero Code of Ordinances, as currently enacted or as may be amended from time to time. The Special Magistrate Clerk is directed to record a true copy of this order in the Public Records of Lee County, Florida. Any such lien which accrues more than (90) days after the date it is recorded and which remains unpaid, may be referred to a collection agency which shall result in the imposition of additional collection fees.

You may request, in writing, a hearing before the Special Magistrate to contest the finding of non-compliance and imposition of fines. Said hearing shall be limited to consideration of whether the violations were timely complied. A written request for a hearing MUST BE MADE TO THE OFFICE OF THE SPECIAL MAGISTRATE AND RECEIVED WITHIN TWENTY (20) DAYS OF THE DATE OF THIS NOTICE. You will be notified of a hearing date and time. If no timely request is received, this Order Imposing Fine and Claim of Lien entered by the Special Magistrate will be recorded in the Public Records of Lee County, constituting a lien on the subject real property.

Respondents may appeal a final administrative order of the Special Magistrate for the Village of Estero to the Circuit Court. An appeal must be filed within thirty (30) days of the execution of the Order to be appealed.

DONE AND ORDERED in the Village of Estero, Lee County, Florida this 18th day of July, 2019

OFFICE OF THE SPECIAL MAGISTRATE
VILLAGE OF ESTERO, FLORIDA

A large, stylized handwritten signature in black ink, appearing to read 'Joe Faerber', is written over a horizontal line. Below the signature is the printed name and title of the signatory.

Joseph Faerber
VILLAGE OF ESTERO, SPECIAL MAGISTRATE

Faint, illegible markings or stamps at the bottom left of the page.

SPECIAL MAGISTRATE CLERK AFFIDAVIT

Dated on July 18 of 2019

Village of Estero Special Magistrate Clerk


By: 
Terry-Ann Boyd-Reynolds

I certify that, under the penalty of perjury that the above written statements are true and accurate to the best of my knowledge.

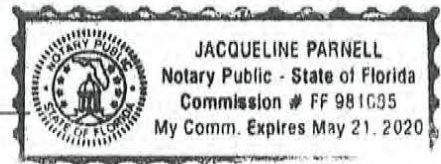
STATE OF FLORIDA)
)ss:
COUNTY OF LEE)

Terry-Ann Boyd-Reynolds stated personally before me that they have personal knowledge of the facts stated herein:

Sworn or affirmed before me on this 18th day of July, 2019


NOTARY PUBLIC

Jacqueline Parnell
PRINT NAME



SEAL:



www.Estero-fl.gov

CODE COMPLIANCE
SPECIAL MAGISTRATE HEARING
9401 Corkscrew Palms Circle, Estero, Florida
OCTOBER 17, 2019 1:00 PM

- 1. INTRODUCTION
- 2. AGENDA CHANGES
- 3. ADMINISTRATION OF OATH TO RESPONDENTS/WITNESSES
- 4. CODE ENFORCEMENT CASES

A. IMPOSITION

1.	Case No. 19050007	GUERRA MYRNA E & RUIZ GUILLERMO
	VIOLATION:	HOME OCCUPATION
	Location: COMPLIED	20601 PINE TREE LN , ESTERO, FL 33928
	Strap No.	294625E4010050060

2.	Case No. 16100011	CHHLCA INVESTMENTS LLC
	Violation:	USE PERMIT, BUFFER REQUIREMENTS
	Location:	20170 S TAMIAMI TRL, ESTERO, FL 33928
	Strap No	284625E1U186 62534

B. NEW CASES

3.	Case No. 19080003	CHARLENE HUFFMAN TR FOR HUFFMAN REVOC TRUST
	Violation:	WORKING WITHOUT PERMITS
	Location:	20511 BASIN DR, ESTERO, FL 33928
	Strap No.	294625E322000 C010



4. Case No. 19080010	20771 TRAIL LLC
Violation:	PARKING OF ADVERTISING VEHICLES
Location:	20771 S TAMIAMI TRL, ESTERO, FL 33928
Strap No.	284625E3050000030

B. MITIGATION

5. Case No. 17050027	LONDONDERRY ASSOCIATES, LLC
Violation:	NUISANCE DECLARED; ILLEGAL DUMPING
Location:	9600 CORKSCREW RD, ESTERO, FL 33928
Strap No.	344625E2U20702358

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodations in order to participate in this proceeding are entitled to the provision of certain assistance at no cost. Please call the Special Magistrate's Clerk at 239-221-5036 at least 48 hours prior to the hearing if this assistance is required. For hearing impaired assistance, please call the Florida Relay Service at 800-955-8771 (TDD) or 800-955-8770 (VOICE).

Any person who decides to appeal a decision of the Special Magistrate will need a record of the proceedings pertaining thereto, and therefore, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Neither the Village of Estero nor the Special Magistrate shall be responsible for providing this record.