



Hillsborough County Florida

LAND USE HEARING OFFICER VARIANCE REPORT

APPLICATION NUMBER: VAR 21-0906

LUHO HEARING DATE: July 26, 2021

CASE REVIEWER: Kevie Defranc

REQUEST: The applicant is requesting a variance for a proposed restaurant drive-through order box on property zoned PD 04-0558.

VARIANCE(S):

Per LDC subsection 6.11.35.B.1, a restaurant drive-through order box cannot be located within 200 feet of residentially zoned property. The applicant requests a 47-foot reduction to the required separation to allow a separation of 153 feet from vacant residentially zoned property to the west.

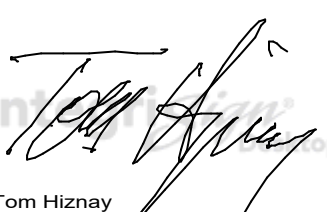
FINDINGS:

- The applicant has submitted a letter from the owner of the affected residentially zoned property, Lennar Homes, which states that Lennar does not object to the requested variance provided that the minimum screening requirements found in the LDC Section 6.11.35.B.2 are not reduced. Additionally, Lennar supports the implementation and maintenance of enhanced buffering beyond what is required in the LDC to account for the reduced separation between the order box and its property.

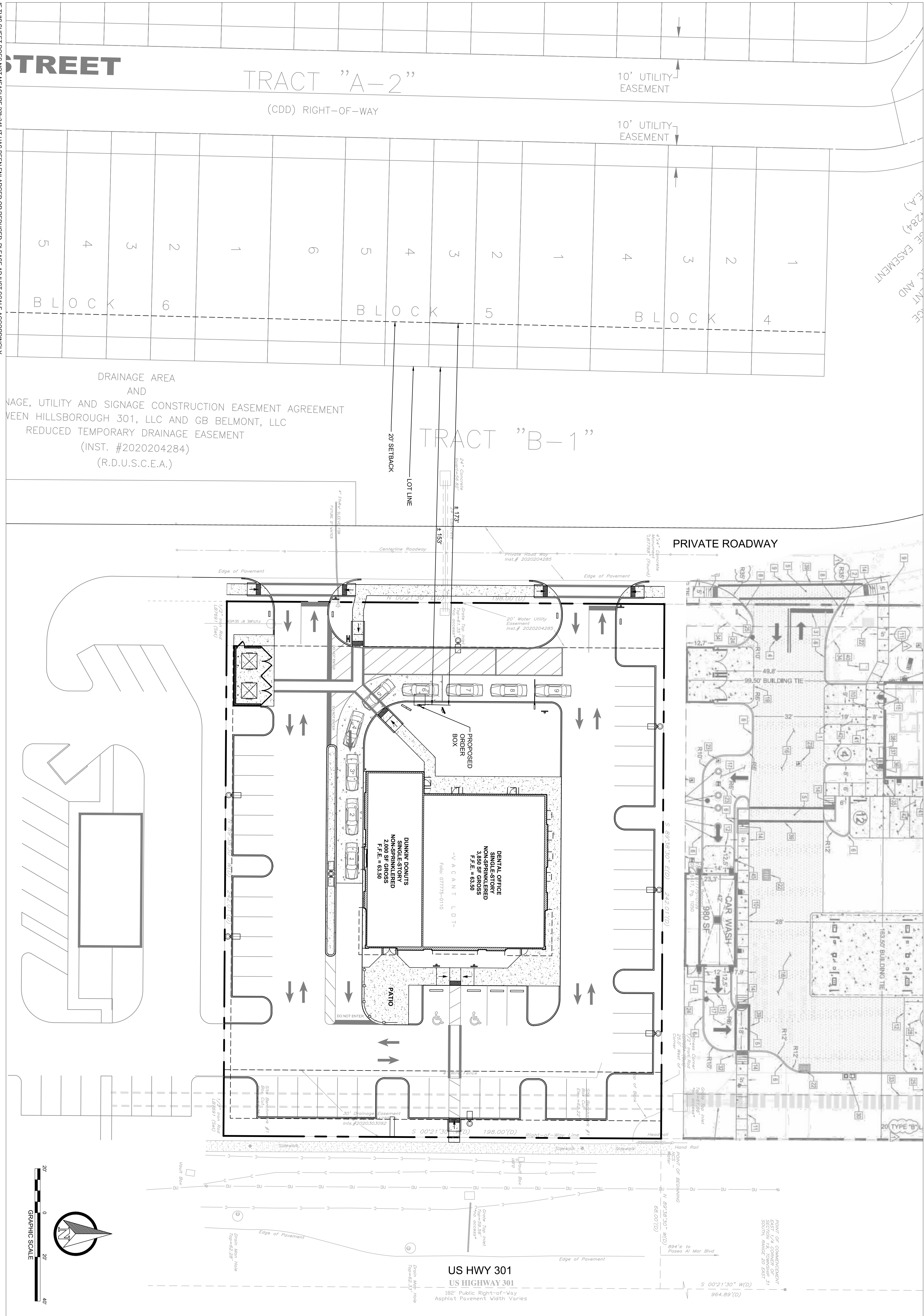
DISCLAIMER:

The variance listed above is based on the information provided in the application by the applicant. Additional variances may be needed after the site has applied for development permits. The granting of these variances does not obviate the applicant or property owner from attaining all additional required approvals including but not limited to: subdivision or site development approvals and building permit approvals.

ADMINISTRATOR'S SIGN-OFF

 Tom Hiznay Mon Jul 12 2021 14:33:00
Attachments: Application Site Plan Petitioner's Written Statement Current Deed

IF THIS SHEET DOES NOT MEASURE 27"x34", IT HAS BEEN ENLARGED OR REDUCED. PLEASE ADJUST SCALE ACCORDINGLY.



<p>PROJ. NO.: 20024</p> <p>ORDER BOARD EXHIBIT</p>	<p>RIVERVIEW DENTAL AND RESTAURANT WMG DEVELOPMENT, LLC 14371 & 14375 S US HIGHWAY 301 WIMAUMA, FL 33598</p>	<p>TARR GROUP</p> <p>8650 E. STATE ROAD 32 ZIONSVILLE, IN 46077 PHONE: 615-517-0996 EMAIL: DUSTIN@TARR-GROUP.COM</p>
--	--	---

VARIANCE REQUEST

1. Project Narrative: In the space below describe the variance including any history and/or related facts that may be helpful in understanding the request. This explanation shall also specifically identify what is being requested (*e.g. Variance of 10 feet from the required rear yard setback of 25 feet resulting in a rear yard of 15 feet*). If additional space is needed, please attach extra pages to this application.

Please see attached Written Statement

2. A Variance is requested from the following Section(s) of the Hillsborough County Land Development Code:

Section 6.11.35.B.1.

ADDITIONAL INFORMATION

1. Have you been cited by Hillsborough County Code Enforcement? No X Yes _____
If yes, you must submit a copy of the Citation with this Application.
2. Do you have any other applications filed with Hillsborough County that are related to the subject property?
No X Yes _____ If yes, please indicate the nature of the application and the case numbers assigned to the application(s): _____
3. Is this a request for a wetland setback variance? No X Yes _____
If yes, you must complete the *Wetland Setback Memorandum* and all required information must be included with this Application Packet (Attachment A).
4. Please indicate the existing or proposed utilities for the subject property:
Public Water X Public Wastewater X Private Well _____ Septic Tank _____
5. Is the variance to allow a third lot on well and/or septic or non-residential development with an intensity of three ERC's? No X Yes _____ If yes, you must submit a final determination of the "Water, Wastewater, and/or Reclaimed Water – Service Application Conditional Approval – Reservation of Capacity" prior to your public hearing (form may be obtained from **19th floor County Center**).



May 28, 2021

Darenda D. Marvin, AICP
Planning and Entitlements Director
WMG Development

Re: Letter of No Objection of Variance to Section 6.11.35(B)(1) for Real Property Located at
14375 S. US Hwy 301, Wimauma, Florida 33598


Dear Ms. Marvin:

As we have discussed, WMG Development, LLC ("WMG") is requesting a variance to section 6.11.35(B)(1) of the Hillsborough County Land Development Code ("Code"), which prohibits an order box used for ordering food and beverages from a drive-through window from being located within 200 feet of any property zoned residential for real property located at 14375 S. US Hwy 301, Wimauma, Florida 33598 (the "Property").

Lennar Homes, LLC ("Lennar") currently owns the adjacent residential property to the west of the Property, within 200 feet of the proposed order box. We understand that WMG is seeking a variance to reduce the distance of the proposed order box to 153 feet from Lennar's eastern lot line and approximately 173 feet from Lennar's proposed residential structure.

Lennar does not object to the above-referenced variance, provided that the minimum screening requirements found in 6.11.35(B)(2) of the Code are not reduced. We also support the implementation and maintenance of enhanced buffering beyond what is required in the Code to account for the reduced separation between the order box and residential uses, as shown on WMG's current site plan. Please have staff email me at Parker.Hirons@Lennar.com should they have any questions.

Sincerely,

DocuSigned by:

DD7E8791838D40A...
Parker Hirons



May 28, 2021

Darenda D. Marvin, AICP
Planning and Entitlements Director
WMG Development

Re: Letter of No Objection of Variance to Section 6.11.35(B)(1) for Real Property Located at 14375 S. US Hwy 301, Wimauma, Florida 33598


Dear Ms. Marvin:

As we have discussed, WMG Development, LLC ("WMG") is requesting a variance to section 6.11.35(B)(1) of the Hillsborough County Land Development Code ("Code"), which prohibits an order box used for ordering food and beverages from a drive-through window from being located within 200 feet of any property zoned residential for real property located at 14375 S. US Hwy 301, Wimauma, Florida 33598 (the "Property").

Lennar Homes, LLC ("Lennar") currently owns the adjacent residential property to the west of the Property, within 200 feet of the proposed order box. We understand that WMG is seeking a variance to reduce the distance of the proposed order box to 153 feet from Lennar's eastern lot line and approximately 173 feet from Lennar's proposed residential structure.

Lennar does not object to the above-referenced variance, provided that the minimum screening requirements found in 6.11.35(B)(2) of the Code are not reduced. We also support the implementation and maintenance of enhanced buffering beyond what is required in the Code to account for the reduced separation between the order box and residential uses, as shown on WMG's current site plan. Please have staff email me at Parker.Hirons@Lennar.com should they have any questions.

Sincerely,

DocuSigned by:

DD7E8791838D40A...
Parker Hirons

VARIANCE CRITERIA RESPONSE

You must provide a response to each of the following questions. If additional space is needed, please attach extra pages to this application.

1. Explain how the alleged hardships or practical difficulties are unique and singular to the subject property and are not those suffered in common with other property similarly located?

Please see attached Written Statement.

2. Describe how the literal requirements of the Land Development Code (LDC) would deprive you of rights commonly enjoyed by other properties in the same district and area under the terms of the LDC.

Please see attached Written Statement.

3. Explain how the variance, if allowed, will not substantially interfere with or injure the rights of others whose property would be affected by allowance of the variance.

Please see attached Written Statement.

4. Explain how the variance is in harmony with and serves the general intent and purpose of the LDC and the Comprehensive Plan (refer to Section 1.02.02 and 1.02.03 of the LDC for description of intent/purpose).

Please see attached Written Statement.

5. Explain how the situation sought to be relieved by the variance does not result from an illegal act or result from the actions of the applicant, resulting in a self-imposed hardship.

Please see attached Written Statement.

6. Explain how allowing the variance will result in substantial justice being done, considering both the public benefits intended to be secured by the LDC and the individual hardships that will be suffered by a failure to grant a variance.

Please see attached Written Statement.

Variance Criteria Response

The applicant is requesting a variance to reduce the distance between an order box for a drive-through fast food establishment and residential uses. The property is located at Folio 077775-2925 (the “Property”). It is within the Planned Development (“PD”) zoning category¹ and Suburban Mixed Use-6 (“SMU-6”) Future Land Use category. The applicant plans to construct a fast food restaurant on the Property, which requires an order box to order food and beverages through a drive-through window. The Hillsborough County Zoning Department cited section 6.11.35(B)(1) as an issue to be addressed on its Site and Subdivision Review Sheet. The applicant is requesting a variance to decrease the minimum distance between order boxes for ordering food or beverages through a drive-through window and property zoned residential pursuant to section 6.11.35(B)(1) from 200 feet to 153 feet. **Exhibit A.**

The Property is approximately 1.10 acres. For the reasons set forth below, the applicant requests that Hillsborough County grant the requested variance.

1. Explain how the alleged hardships or practical difficulties are unique and singular to the subject property and are not those suffered in common with other property similarly located?

The applicant is requesting a variance to reduce the distance between an order box for a drive-through window and residential uses. The applicant has a practical difficulty of satisfying this distance requirement for several reasons. First, there are traffic and safety issues associated with having a drive-through lane because it must go in a circle around the building in order to “stack” cars to get them off the internal cross-access road to the west of the Property. For this reason, the order box must go in its current location. Second, the fast food establishment needs to face Highway 301 to ensure visibility and attract customers. Third, the Property has multiple tenants so the order box location is again limited to its current location.

2. Describe how the literal requirements of the Land Development Code (LDC) would deprive you of rights commonly enjoyed by other properties in the same district and area under the terms of the LDC.

Without this variance, the applicant will be deprived of rights commonly enjoyed by other properties in the same area because of the traffic and safety issues. The internal cross-access road discussed above was required by Condition #23 of PRS 15-1152. To satisfy this condition, the applicant is constructing an internal roadway to the west of the Property and is providing cross-access to the parcel to the south in the southeast corner of the Property. Because of these roads, the building must go in the current location in order to ensure that cars can move in a circular pattern around the building to stack the cars as efficiently as possible and to allow the cross-access point to property to the south. Because of these traffic and access issues, the order box must be in the current location.

¹ The Property is party of a large mixed-use project that is zoned Planned Development pursuant to PD 04-0558, which was amended in 2015 pursuant to PRS 15-1152.

3. Explain how the variance, if allowed, will not substantially interfere with or injure the rights of others whose property would be affected by allowance of the variance.

The variance will not interfere with the rights of others. In addition to a 153-foot distance between the residential uses and the drive-through lane, there will be buffering on both sides of the cross-access roadway to reduce noise from the order box. **Exhibit B.** The residential property to the west will have Type “B” buffering. Along the applicant’s Property line, the applicant will be providing a continuous hedge row of Podocarpus (Podocarpus macrophyllus) and (3) DD Blanchard Magnolias (Magnolia Grandiflora ‘DD. Blanchard’). Podocarpus is a densely compact evergreen conifer shrub. At maturity, the shrubs will be grown into a hedge and maintained at a height of 6’ or higher and their typical spread is 3’-5’. This shrub is specified to be, at time of planting, in a 5 gallon pot (3 gallon is typical at installation), 36” minimum height, and 20” minimum spread. The D.D. Blanchard Magnolia tree is evergreen, and it’s large leaves are dark green with a brown/rusty underside. It can reach a maturity height of 75-80 feet with a canopy of 35-40 feet in width, making it one of the best options for year round screening. This tree is specified to be, at time of planting, 3” caliper with a minimum of 12’ in height and 5’ spread. In addition, the hours of operation for the order box are limited to 5 am to 10 pm in order to minimize noise during nighttime hours.

Importantly, the adjacent residential property owner has provided a letter of no objection. **Exhibit C.** Another adjacent property owner has also provided a letter of approval for the applicant to seek and apply for the requested variance. **Exhibit D.**

4. Explain how the variance is in harmony with and serves the general intent and purpose of the LDC and the Comprehensive Plan (refer to Section 1.02.02 and 1.02.03 of the LDC for description of intent/purpose).

The intent and purpose of the code and comprehensive plan are to allow the use of Property in accordance with zoning and land use regulations. The use of this property is for a Dunkin Donuts fast food establishment. By allowing the variance, the Project will be composed of a walkable area where residential renters and owners can walk to various commercial establishments.

5. Explain how the situation sought to be relieved by the variance does not result from an illegal act or result from the actions of the applicant, resulting in a self-imposed hardship.

There is no self-imposed hardship. Because this PD was approved with multiple parcels and uses, it was impossible to know at the time of the PD approval that the distance between the residential and commercial uses would pose this type of problem.

6. Explain how allowing the variance will result in substantial justice being done, considering both the public benefits intended to be secured by the LDC and the individual hardships that will be suffered by a failure to grant a variance.

This variance will allow the property owner to develop the Property into a commercial parcel in harmony with and consistent with the surrounding development. The variance will protect

private property rights and will insure that the developer can maximize use of space to cluster commercial development.

2

Consideration: \$1,100,000.00
Documentary Stamps \$7,700.00

Prepared by and after recording, return to:

Donna J. Feldman, Esquire
FELDMAN & MAHONEY, P.A.
2240 Belleair Road, Suite 210
Clearwater, Florida 33764

Folio No.# 077775-0110

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED ("Deed") is made this 4th day of December, 2020, by **HILLSBOROUGH 301, LLC**, a Delaware limited liability company ("**Grantor**"), whose address is 7807 Baymeadows Road East, Suite 205, Jacksonville, Florida 32256, in favor of **WMG DEVELOPMENT, LLC**, a Delaware limited liability company, whose address is 1200 Network Centre Drive, Suite 2, Effingham, Illinois 62401 ("**Grantee**").

WITNESSETH, that Grantor, for and in consideration of the sum of Ten and 00/100 Dollars, and other valuable consideration, lawful money of the United States of America, to it in hand paid by Grantee, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed to Grantee, its successors and assigns forever, all of the following described land in Hillsborough County, Florida ("**Property**");

That certain real property which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference, together with all fixtures, improvements and appurtenances thereunto appertaining.

TO HAVE AND TO HOLD the Property, with the appurtenances, unto Grantee, its successors and assigns, in fee simple forever;

And Grantor does hereby covenant with Grantee that the Property is free from all liens and encumbrances except those matters set forth on Exhibit B attached hereto and incorporated herein by reference (the "**Permitted Exceptions**");

And subject to the Permitted Exceptions, Grantor does hereby fully warrant title to the Property, and will defend the same against the lawful claims of all persons claiming by, through or under Grantor, but against none other.

[Signature on following page.]

[Signature page to Special Warranty Deed]

IN WITNESS WHEREOF, Grantor has executed this Deed under seal on the date aforesaid.

GRANTOR:

Signed, sealed and delivered
in the presence of:

HILLSBOROUGH 301, LLC,
a Delaware limited liability company

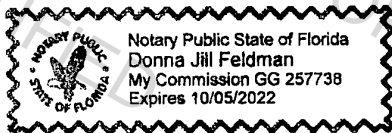
By: [Signature]
Rick Harcrow, Vice President

[Signature]
Signature of Witness #1
Eiam O'Reilly
Typed/Printed Name of Witness #1

[Signature]
Signature of Witness #2
Donna J. Feldman
Typed/Printed Name of Witness #2

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 17th day of November, 2020, by Rick Harcrow, as Vice President of Hillsborough 301, LLC, a Delaware limited liability company, on behalf of the company. He ☒ is personally known to me or ☐ has produced _____ (type of identification) as identification.



[Signature]
Notary Public, State of Florida

Printed name: _____

My Commission Expires: _____

(NOTARY SEAL)

Exhibit A

Property

A parcel of land lying within the Southeast 1/4 of Section 19, Township 31 South, Range 20 East, Hillsborough County, Florida, and being more particularly described as follows:

COMMENCE at the East 1/4 corner of said Section 19; thence along the East line of the Southeast 1/4 of said Section 19, S.00°21'30"W., a distance of 964.89 feet to a point; thence N.89°38'30"W., a distance of 68.00 feet to the West Right-of-way line of U.S. Highway No. 301 and the POINT OF BEGINNING for the following described parcel; thence along said West Right-of-way line, S.00°21'30"W., a distance of 198.00 feet to a point being the Southeast Corner of said parcel; thence leaving the aforementioned West Right-of-way line, N.89°38'30"W., a distance of 242.01 feet to a point being the Southwest Corner of said parcel; thence N.00°21'30"E., a distance of 198.00 feet to a point being the Northwest Corner of the said parcel; thence S.89°38'30"E., a distance of 242.01 feet to the POINT OF BEGINNING.

Exhibit B

Permitted Exceptions

1. General or special taxes and assessments for the year 2021, and subsequent years, not yet due and payable.
2. Terms and conditions of the Master Declaration of Covenants, Conditions, Restrictions and Easements as recorded in O.R. Book 26381, Page 891, as amended in O.R. Book 27056, Page 662 and Clerk's File Number 2020204285, Public Records of Hillsborough County, Florida.
3. Agreement Regarding Use Restrictions - Hillsborough 301 Parcels as recorded in O.R. Book 26417, Page 1107, Public Records of Hillsborough County, Florida.
4. Development Agreement for the Design, Permitting and Construction of a Segment of U.S. Highway 301 recorded in O.R. Book 14791, Page 593, together with Assignment of Rights and Obligations recorded in O.R. Book 15090, Page 163 and Second Amendment recorded in O.R. Book 23186, Page 1759, Public Records of Hillsborough County, Florida.
5. Perpetual Easement to State of Florida Department of Transportation recorded in Clerk's File Number 2020303092, Public Records of Hillsborough County, Florida.
6. Assignment of Development Entitlements by and between Hillsborough 301, LLC, a Delaware limited liability company and WMG Development, LLC, a Delaware limited liability company, to be recorded in the Public Records of Hillsborough County, Florida.
7. Declaration of Restrictive Covenants by and between Hillsborough 301, LLC, a Delaware limited liability company, and WMG Development, LLC, a Delaware limited liability company, to be recorded in the Public Records of Hillsborough County, Florida.

Exhibit A

Property

A parcel of land lying within the Southeast 1/4 of Section 19, Township 31 South, Range 20 East, Hillsborough County, Florida, and being more particularly described as follows:

COMMENCE at the East 1/4 corner of said Section 19; thence along the East line of the Southeast 1/4 of said Section 19, S.00°21'30"W., a distance of 964.89 feet to a point; thence N.89°38'30"W., a distance of 68.00 feet to the West Right-of-way line of U.S. Highway No. 301 and the POINT OF BEGINNING for the following described parcel; thence along said West Right-of-way line, S.00°21'30"W., a distance of 198.00 feet to a point being the Southeast Corner of said parcel; thence leaving the aforementioned West Right-of-way line, N.89°38'30"W., a distance of 242.01 feet to a point being the Southwest Corner of said parcel; thence N.00°21'30"E., a distance of 198.00 feet to a point being the Northwest Corner of the said parcel; thence S.89°38'30"E., a distance of 242.01 feet to the POINT OF BEGINNING.



VARIANCE APPLICATION

Received
06/01/2021
Development Services

IMPORTANT INSTRUCTIONS TO ALL APPLICANTS:

You must schedule an appointment to submit this application by calling 813-272-5600.
All requirements listed on the submittal checklist must be met. **Incomplete applications will not be accepted.**

Property Information

Address: 14371 & 14375 S. US Hwy 301 City/State/Zip: Wimauma, FL 33598 TWN-RN-SEC: 31/20/19
Folio(s): 077775-2925 Zoning: PD Future Land Use: SMU-6 Property Size: 1.1 Acres

Property Owner Information

Name: WMG Development, LLC Daytime Phone: (941) 545-6271
Address: 1200 Network Centre Drive, Suite 2 City/State/Zip: Effingham, IL 62401
Email: dmarvin@wmgdevelopment.com FAX Number:

Applicant Information

Name: WMG Development, LLC Daytime Phone: (941) 545-6271
Address: 1200 Network Centre Drive, Suite 2 City/State/Zip: Effingham, IL 62401
Email: dmarvin@wmgdevelopment.com FAX Number:

Applicant's Representative (if different than above)

Name: Jacob T. Cremer - Stearns Weaver Miller Daytime Phone: (813) 223-4800
Address: 401 E. Jackson Street, Suite 2100 City / State/Zip: Tampa, FL 33602
Email: jcremer@stearnsweaver.com & cwalden@stearnsweaver.com FAX Number: (813) 222-5089

I HEREBY SWEAR OR AFFIRM THAT ALL THE INFORMATION PROVIDED IN THIS APPLICATION PACKET IS TRUE AND ACCURATE, TO THE BEST OF MY KNOWLEDGE, AND AUTHORIZE THE REPRESENTATIVE LISTED ABOVE TO ACT ON MY BEHALF FOR THIS APPLICATION.
STEARNS WEAVER MILLER

By: Jacob T. Cremer
Signature of Applicant
Jacob T. Cremer, As Authorized Agent
Type or Print Name

I HEREBY AUTHORIZE THE PROCESSING OF THIS APPLICATION AND RECOGNIZE THAT THE FINAL ACTION ON THIS PETITION SHALL BE BINDING TO THE PROPERTY AS WELL AS TO CURRENT AND ANY FUTURE OWNERS.
STEARNS WEAVER MILLER

By: Jacob T. Cremer
Signature of Property Owner
Jacob T. Cremer, As Authorized Agent
Type or Print Name

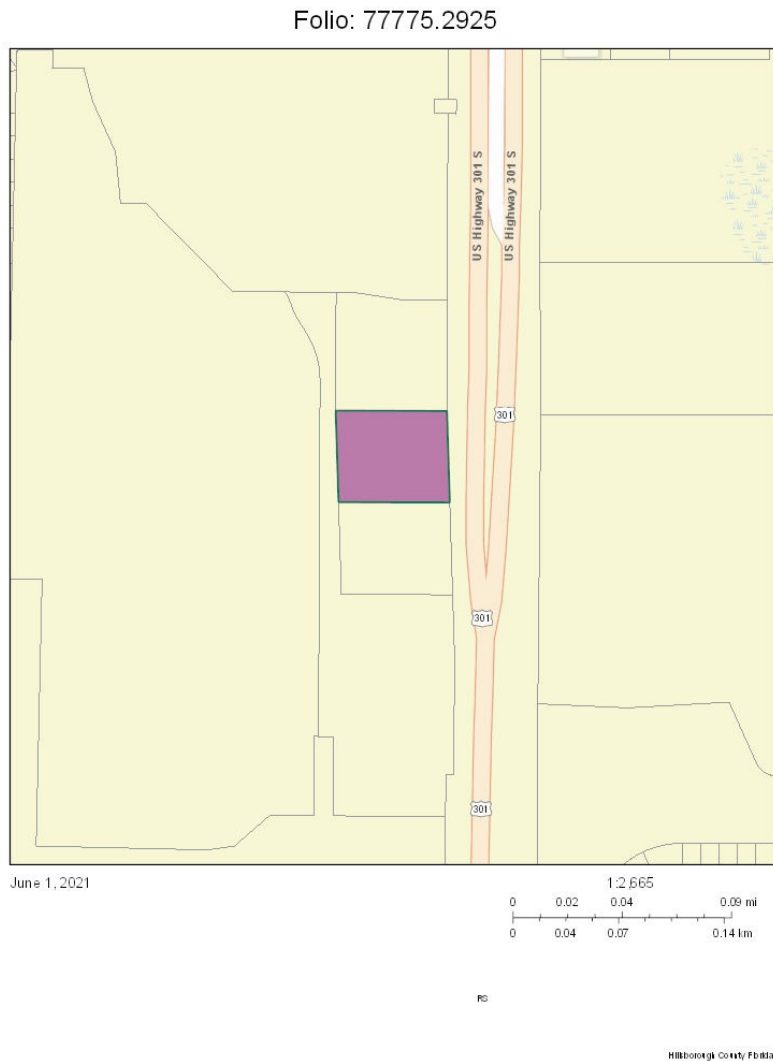
Office Use Only

Intake Staff Signature: Ana Lizardo Intake Date: 06/01/2021
Case Number: 21-0906 Public Hearing Date: 07/26/2021
Receipt Number: 21-0906



PARCEL INFORMATION HILLSBOROUGH COUNTY FLORIDA

Jurisdiction	Unincorporated County
Zoning Category	Planned Development
Zoning	PD
Description	Planned Development
RZ	04-0558
Flood Zone:X	AREA OF MINIMAL FLOOD HAZARD
FIRM Panel	0515H
FIRM Panel	12057C0515H
Suffix	H
Effective Date	Thu Aug 28 2008
Pre 2008 Flood Zone	X
Pre 2008 Firm Panel	1201120515B
County Wide Planning Area	Apollo Beach
Community Base Planning Area	SouthShore
Community Base Planning Area	Apollo Beach
Planned Development	PD
Re-zoning	null
Note	APPROVED AFTER COURT APPEAL
Major Modifications	13-0360
Personal Appearances	07-0012,07-1116,15-1152
Census Data	Tract: 014007 Block: 1025
Future Landuse	SMU-6
Urban Service Area	USA
Mobility Assessment District	Urban
Mobility Benefit District	4
Fire Impact Fee	South
Parks/Schools Impact Fee	SOUTH
ROW/Transportation Impact Fee	ZONE 9
Wind Borne Debris Area	140 MPH Area
Competitive Sites	NO
Redevelopment Area	NO



Folio: 77775.2925
PIN: U-19-31-20-ZZZ-000003-16050.5
WMG DEVELOPMENT LLC
Mailing Address:
 1200 NETWORK CENTRE DR STE 2
 EFFINGHAM, IL 62401-4637
Site Address:
 0
 , FL
SEC-TWN-RNG: 19-31-20
Acreage: 1.10107005
Market Value: \$40,425.00
Landuse Code: 0000 VACANT RESIDENT

Hillsborough County makes no warranty, representation or guaranty as to the content, sequence, accuracy, timeliness, or completeness of any of the geodata information provided herein. The reader should not rely on the data provided herein for any reason. Hillsborough County explicitly disclaims any representations and warranties, including, without limitations, the implied warranties of merchantability and fitness for a particular purpose. Hillsborough County shall assume no liability for:

1. Any error, omissions, or inaccuracies in the information provided regardless of how caused.
2. Any decision made or action taken or not taken by any person in reliance upon any information or data furnished hereunder.

21-0906