

General Waiver Justification: 22-ZONE-0068; 5437 New Cut Road

The Applicant hereby requests a waiver of Section 5.5.1.A.3.a to omit a masonry wall long the VUA area adjacent to the street.

Explanation of Waiver:

1. This waiver will not adversely affect adjacent property owners because this portion of the site will remain as a restaurant without any knee wall, which has not existed since the site has been operated commercially; it also will not adversely affect public health, safety or welfare because this is an aesthetic code requirement which can be mitigated by increased vegetative plantings as set forth in the landscape plan. LDC 5.5.1.A.3.a states in pertinent part: “Side parking that exceeds 40% of the total linear lot frontage adjacent to right-of-way shall provide a minimum 3-foot masonry, stone or concrete wall **THAT MAKES REFERENCE TO A SIMILAR DESIGN WITH THE SURROUNDING AREA...**”. (Emphasis added) The New Cut Road/Taylor Boulevard Corridor Study notes in pertinent part that “the section of roadway between Palatka Road and Third Street Road consists of various commercial and retail buildings as well as some apartments. **This appears to be the least consistent street face along the entire corridor as the building character, setbacks, parking facilities and other features appear to be random.**” Thus, there is no similar design to which reference can be made for this construction and the lack of the wall is not out of character for the area.
2. The waiver will not violate the Comprehensive Plan for all the reasons set forth herein in the Detailed Statement of Compliance with all applicable Guidelines and Policies of Plan 2040 Comprehensive Plan filed with the original rezoning application. As only a portion of this site is being developed, which does not include the existing restaurant on New Cut Road, the only new 2040 Plan Guidelines and Policies of consequence are those pertaining to building design, landscaping and screening, all of which are being greatly improved as shown on the development plan and the landscape plan.
3. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because only a portion of this site would be required to insert a knee wall where, given the circumstances of the overall site, the landscaping is greatly improved and in keeping with the overall aesthetic scheme for this mixed use activity center and the New Cut/Taylor Boulevard Corridor Study; further, the as-built condition that is being improved with a new building, added screening and landscaping does not add to non-compliance with the Land Development Code, but rather, if anything, the partial re-build and site improvements bring the plan into better compliance with the Land Development Code and the Plan 2040 Comprehensive Plan.
4. Strict application of the provisions of the regulation would deprive the Applicant of a reasonable use of the land and would create an unnecessary hardship on the Applicant because it

would have to build a wall at considerable expense relative to the small scale of the development on the portion of the site that does not really impact the new development area on Southside Drive and where it does not make common sense because of the limited area adjacent to right of way and where other, better and more practical landscape devices can be employed.