

Tab 4

CONTINUANCE

FUTURE PLAN, LLC. VARIANCE (VAR-2010-04)

**Staff Report
VAR - 2010-04
900 17th Street West**

BACKGROUND

The property located at 900 17th Street is a corner lot with two frontages zoned General Commercial (CG) that is occupied by a vacant commercial building that was once a Movie Gallery retail store. The applicant and current owner, Future Plan LLC has owned this property since 2005 and is pursuing redevelopment of this property.

The applicant is requesting front set-back variances from the required 20 foot setback along both streets, 8th Avenue West and 17th Street to construct additions to both sides of the existing 5,648 square feet commercial building which is located on the corner. The existing building was constructed on the property line in 1950 and has no front setbacks either along 8th Avenue West or 17th Street West. The site also has access from both streets.

PARCEL ID/SIZE/FAR

Parcel ID:	2424600369
Lot Size:	1.0 acres
Existing building size:	5,648 square feet
Existing FAR:	5,648 sq. ft./1.0 ac.= 0.13
Proposed addition:	3,400 square feet
Proposed FAR:	9,048 sq. ft./1.0 ac.= 2.1

EXISTING LAND USE/ZONING CATEGORY

Future Land Use:	General Commercial (GCOM): 3.0 FAR
Zoning:	CG (Commercial General)

CG SETBACK REQUIREMENTS

Minimum width:	100 feet
Front setback:	20 feet
Side setback:	15 feet*
Rear setback:	15 feet*
Corner:	20 feet
Maximum height:	60 feet

*Note: No setback is required when adjacent to commercial or industrial districts.



PARKING AGREEMENT WITH HUNGRY HOWIE'S

Based on the Property Appraiser's information, the Movie Gallery building was built in 1950 and the Hungry Howie's building was erected in 1994 as a second building on the same lot. In 1998, the 0.48 acre parcel (2424600407) was split and sold to Hungry Howie's with a private agreement for shared parking. The Hungry Howie's parcel has no street frontage and its primary access is off an easement connecting to 17th Street. This easement is a fire access lane which also serves other businesses including Gulf Coast Marine Institute (school) located north of the Hungry Howie's site.

The piecemeal development of the various parcels created from the original parent tract resulted in a number of interdependencies among parcels particularly the Hungry Howie's parcel which cannot stand-alone and relies on the Movie Gallery parcel for most of its parking. Hungry Howie's restaurant use increases the parking dependency as restaurants generally require more parking than retail uses. The configuration of the Hungry Howie lot is such that approximately 35% of this parcel is used for access and drainage easements resulting in an effectively higher FAR (0.33) compared to the actual

0.21 FAR, the same intensity being requested by the subject variance on the Movie Gallery parcel.

In order to allow consideration of alternative parking plans in situations such as this throughout the City, the City Commission approved Ordinance 2010-19 on December 6, 2010, to amend Section 28-74 of the Zoning Code by adding provisions to the Joint Use of Parking Facilities.

ACTION REQUESTED

The applicant wishes to expand the existing building and is requesting a variance of the 20 foot setback for the front yards facing 17th Street West and 8th Avenue West in order for the additions to line up in both directions with the existing building on the corner.

Justification for this request is attached to this Staff Report.

VARIANCE PROCEDURES

In accordance with Section 13.6, Appendix B: the Zoning Code, the following procedures must be met for approval:

- (a) *A written application for a variance is submitted to the zoning administrator demonstrating:*
- (1) *That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, buildings, or structures in the same district;*

The existing structure is non-conforming as it sits on the property line along 17th Street West and 8th Avenue West and the current zoning code requires a 20 foot setback. A variance is being requested to recognize zero setbacks of the existing building and for additions to the building, 95 feet along 17th Street and 75 feet along 8th Avenue which will also run along the property line.

The special conditions and circumstances that are peculiar to this property include the following:

- **The applicant had not signed off on Hungry Howie's expansion or the additional parking required for that expansion;**
- **Hungry Howie's expansion of 1,416 square feet has resulted in additional parking spaces on the applicant's property and less room for their own building expansion and associated parking;**

- (2) *That literal interpretation of the provisions of this code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this code;*

The literal interpretation of the code would result in a less functional site as the ability to provide required parking would be diminished if the addition were to be setback 20 feet.

(3) That the special conditions and circumstances do not result from the actions of the applicant; and

The unique and special conditions and circumstances of this parcel and its relationship with the adjacent parcel predate the purchase of this parcel in 2005 by the current owner and applicant.

(b) No petition for a variance may be considered by the Planning and Zoning Board until public notice has been given of a public hearing.

The applicant has given public notice of the public hearing.

(c) The Planning and Zoning Board shall make findings that the above notice requirements have been met.

Proof of the public noticing requirements has been met.

(d) The Planning and Zoning Board shall make findings that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.

While staff supports a variance for the expansion of the existing building, it is staff's opinion that the variance as requested does not represent the minimum variance required to allow an expansion of the existing building. The minimum amount of variance required to achieve the additional square foot requested would involve an expansion of the existing building width along 17th Street which is currently more impacted than 8th Avenue. As in the variance request, the east-west building orientation would require closure of the easternmost access off 17th Street at the loss of three additional parking spaces. However, the overall layout and appearance of the commercial area would be more aesthetically pleasing, especially along 8th Avenue, the principal gateway into the City.

ACTION REQUESTED

The Planning and Zoning Board shall make findings that the granting of the variance will be in harmony with the general purpose and intent of this code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The applicant's justification for the variance notes that the placement of the structure on the site would allow the property to be redeveloped with a New

Urbanism appeal with the building located along the roadway frontage and the surface parking located in the center of the site.

Staff recommends approval for a 20 foot setback variance from 17th Street only for the following reasons:

- (1) There is undue hardship involved as the existing building does not meet the 20 front setbacks for 20 feet along 8th Avenue West and 108 feet along 17th Street.
- (2) There are conditions peculiar to the land. The relationship (configuration and private agreement) between the subject property and Hungry Howie's property for access and shared parking is unique requiring specific attention.
- (3) The required 20-foot front yard setback cannot be met without further removal of required parking spaces.
- (4) The applicant has shown by application of this variance petition that there is some unique economic hardship that necessitates this variance, namely, to redevelop this property for lease or sale. The Movie Gallery business has been closed for approximately five years.

STAFF RECOMMENDATION:

Staff recommends the following Variances:

1. A 20 foot front setback for the existing building along 17th Street and 8th Avenue;
2. A 20 foot front setback for a proposed addition along 17th Street

PLANNING AND ZONING BOARD DECISION:

The Planning and Zoning shall **APPROVE**, **APPROVE WITH CONDITION(S)** or **DENY** the proposed Variance.



City of Palmetto Florida Variance Requests

ID	Variance ID
	<i>VAR 2010-04</i>

Owner Information

Prefix	First Name	Last Name
	Roy	Smith
Suffix	Title	Organizational Name
	Agent	Future Plan, LLC
Address		
1510 South Tuttle Avenue		
City	State	County
Sarasota	FL	Sarasota
Postal Code	34239	
Home Phone	Work Phone	Fax Number
		E-mail Address

Property Information

Property Address			
900 17th Street West, Palmetto, Florida			
Property Size			
+/- 1 acre; 217 x 282 feet less a parcel 130 x 150 feet			
DPID	Property Section	Property Township	Property Range
24246.0036/9	11	34S	17E
Property Blocks	Property Lots	Existing Use	
n/a	n/a	Commercial/Retail (vacant)	

**Legal
Description:**

<p><i>Attach if Necessary</i></p> <p>See attached Exhibit "A"</p>

Current Future Land Use Classification	Proposed City Future Land Use Classification	Current Zoning Classification	Proposed City Zoning Classification
Site: GCOM	Site: n/a	Site: CG	Site: n/a
North: GCOM	North: n/a	North: CG	North: n/a
South: GCOM/MHP	South: n/a	South: CG/P	South: n/a
East: GCOM*	East: n/a	East: CG*	East: n/a
West: GCOM	West: n/a	West: CG	West: n/a

* a portion of the property to the east remains unincorporated

Variance from what?
 Section 4.3 of the City of Palmetto Zoning Code; Variance from required 20 foot Front Yard setback.

Project description
 Building expansion along 17th Street West and/or 8th Avenue. The Variance Area requested is shown on the attached Exhibit "B".

Please include the following with the application:

Written Statement Demonstrating:

Special conditions or circumstances, which are peculiar to the land, structure or building, which are not applicable to others in the same district.

See attached Exhibit "C".

That interpretation of the provisions of this code would deprive the applicant rights commonly enjoyed by other properties in the same district.

See attached Exhibit "C".

That the special conditions and circumstances do not result from the action of the applicant.

See attached Exhibit "C".

That granting the variance will not confer on the applicant any special privilege that is denied by this ordinance to others in the same district.

See attached Exhibit "C".

Survey Map Showing Property and Vicinity (to scale)/Site Plan Copy of Deed

Owner Authorization Fee (\$200) Shall pay advertising costs

The names and addresses can be obtained by providing the Property Appraiser's Office, 915 4th Ave. W. in Bradenton, FL 34205. Ph: 941-748-8208 and FAX 941-742-5664, with the Data Processing Number (Parcel ID) of your property.

The owner of this property and the undersigned agree to conform to all applicable laws of the City of Palmetto and to all applicable Federal, State, and County laws.

Shawanda D. Moore
Signature of Applicant or Agent

11-18-10
Date

Date public notified

Date of hearing

EXHIBIT "A"
LEGAL DESCRIPTION

Commence at the Southeast corner of the Southwest 1/4 of Section 11, Township 34 South, Range 17 East, Manatee County, Florida; thence N 00° 19'43" E, along the East line of said Southwest 1/4, a distance of 37.00 feet; thence N 89° 28'47" W, a distance of 42.00 feet to the West right of way of 8th Avenue West (U.S. Business 41) for a Point of Beginning; thence N 00° 19'34" E, along said West right of way line, a distance of 217.28 feet; thence N 89° 15'47" W, a distance of 117.70 feet; thence N 00° 44'13" E, a distance of 20.00 feet; thence N 89° 15'47" W, a distance of 108.00 feet; thence S 00° 44'13" W, a distance of 20.00 feet; thence N 89° 15'47" W, a distance of 59.00 feet; thence S 00° 12'30" E, a distance of 218.38 feet to the intersection with the North right of way line of 17th Street West; thence S 89° 28'47" E, along said North right of way, a distance of 282.65 feet to the Point of Beginning. Being and lying in Section 11, Township 34 South, Range 17 East, Manatee County, Florida.

AND

Commence at the Southeast corner of the Southwest 1/4 of Section 11, Township 34 South, Range 17 East, Manatee County, Florida; thence N 00° 19'43" E, along the East line of said Southwest 1/4, a distance of 37.00 feet; thence N 89° 28'47" W, 42.00 feet to the point of intersection of the West right of way line of 8th Avenue West (U.S. Business 41) and the North right of way line of 17th Street West, said point being the Point of Beginning; thence continue N 89° 28'47" W, along said North right of way line, a distance of 138.50 feet; thence S 00° 19'43" W, 2.20 feet; thence S 89° 28'47" E, 138.50 feet; thence N 00° 19'43" E, 2.20 feet to the Point of Beginning.

LESS

Commence at the Southeast corner of the Southwest 1/4 of Section 11, Township 34 South, Range 17 East, Manatee County, Florida; thence N 00° 19'43" E, along the East line of said Southwest 1/4, a distance of 37.00 feet; thence N 89° 28'47" W, a distance of 42.00 feet to the West right of way of 8th Avenue West (U.S. Business 41); thence N 00° 19'43" E, along said West right of way, a distance of 148.53 feet; thence continue N 00° 19'43" E, a distance of 68.76 feet; thence N 89° 15'47" W, a distance of 117.70 feet; thence N 00° 44'13" E, a distance of 20.00 feet; thence N 89° 15'47" W, a distance of 19.81 feet to the Point of Beginning; thence continue N 89° 15'47" W, a distance of 88.19 feet; thence S 00° 44'13" W, a distance of 20.00 feet; thence N 89° 15'47" W, a distance of 59.00 feet; thence S 00° 12'30" E, a distance of 131.24 feet; thence N 89° 57'42" E, a distance of 148.58 feet; thence N 00° 41'07" W, a distance of 149.26 feet to the Point of Beginning. Lying and being in Section 11, Township 34 South, Range 17 East, Manatee County, Florida.

City of Palmetto
Affidavit of Ownership/Agent Authorization

File Number: _____

To be filled out by the property Owner

Owner Name: Future Plan, LLC

Mailing Address: 1510 South Tuttle Avenue, Sarasota, FL 34239

Officer's Name: Roy Smith

Title: Manager

Being first duly sworn, depose(s) and say(s):

1. That I am (we are) the owner's and recorded title holders(s) of the following described property legal description, to wit:

See attached Exhibit "A".

(if necessary attach the property's legal description as exhibit "A")

2. That this property constitutes the property for which a request for a variance

_____ is being applied for to the City of Palmetto,

Florida

(Type of application approval requested)

3. That the undersigned has (have) appointed and does (do) appoint the Attorneys and Employees of the law firm of Grimes Goebel et al. as agent(s) execute any petitions or other documents necessary to affect such petition; and request that you accept my agent(s) signature as representing my agreement of all terms and conditions of the approval process;
4. This affidavit has been executed to induce The City of Palmetto, FL to consider and act on the forgoing request;

5. That I (we) the undersigned authority, herby certify the foregoing is true and correct

Owner's signature / Print title _____
Owner's signature / Print Title _____ 10/18/10

To be Filled out by a licensed Notary Republic

Sate of Florida
County of Manatee SARASOTA

The foregoing instrument was acknowledged before me this 11/18/10
(Date)

by Roy Smith which is personally known to me or who has
(Name of persons acknowledging)
produced _____ as identification.
(Type of Identification)

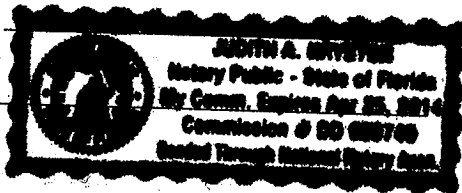
Judith Kryston
Signature of person Taking acknowledgement/ Serial Number, if any

JUDITH KRYSTON
Print Name

Title or rank _____

My Commission expires:

Commission Number:



**Future Plan, LLC
Variance Application
Exhibit "C"**

Narrative Description

The subject site is located at the northwest corner of 17th Street West and Business Highway 41 (8th Avenue West) and is part of the northern gateway of the City. The site is occupied by an existing structure that previously housed a bank and still contains the vault. The remainder of the site is occupied by drive aisles and parking, which are currently shared with the neighboring parcel to the northwest (i.e., the site now occupied by the Hungry Howie's Pizza Buffet). The applicant has owned the site since 2005 and is pursuing redevelopment of the property. The site has been vacant since its prior tenant (i.e., Movie Gallery) vacated. One of the most significant obstacles to redevelopment has been the site's physical constraints.

The site is bounded by two thoroughfare roads (on the south and east sides). Neither roadway is currently slated to be expanded. The property is L-shaped with significant road frontage but constrained on the interior by the landlocked "Hungry Howie's" parcel. The Hungry Howie's structure was recently expanded to within six (+/-) feet of both the north-south and the east-west boundaries between that parcel and this parcel (on belief, that construction is a violation of setback requirements for which no variance has been issued).

The structure directly abuts the adjacent rights-of-way with no front setbacks on either 17th Street or 8th Avenue. The existing structure is built within the required front yard setbacks of the current code and is therefore a legal non-conformity under the City's current zoning requirements.

The placement of the structure on the site would allow the property to be redeveloped with a New Urbanism appeal with the building located along the roadway frontage and the surface parking located in the center of the site. Even though the City's approved Downtown Design Guidelines are not strictly applicable to the site, the Applicant believes that the New Urbanism elements of those guidelines would enhance the northern entrance into the City's commercial district, and the Applicant hopes to redevelop the property to comport with the City's vision for the future and to serve as an example for other properties in the commercial center of the City.

Finally, because of the recent expansion of the Hungry Howie's structure on the interior neighboring parcel, it is impossible to expand the building into the interior of the site to conform to applicable front yard setbacks while maintaining adequate parking and circulation.

Requirements for a Variance

- A. *Special conditions or circumstances, which are peculiar to the land, structure or building, which are not applicable to others in the same district.*

This site is in a very unique position, with characteristics that do not affect other sites with similar zoning within the City.

- The site is constrained by 2 thoroughfare roads and an existing (and recently expanded) structure on an interior neighboring parcel.
- Due to the physical constraints, it is impossible to redevelop the site and expand the structure to the interior of the property while maintaining adequate parking and internal traffic circulation.
- The site currently provides parking and traffic flow for uses on-site as well as on other neighboring parcels.
- The existing structure already sits within the setback areas.
- The existing structure houses a bank vault which would be extremely costly to remove if the applicant were to redevelop the site by demolishing the existing structure and rebuilding in the center of the parcel.
- The existing structure has been deemed too small for certain uses wanting to lease or purchase the space.

B. That interpretation of the provisions of this code would deprive the applicant rights commonly enjoyed by other properties in the same district.

The Zoning Code would allow for significantly higher intensity use of this site but the physical constraints of the site make it difficult or impossible to realize such intensity of use.

- The permissible Floor-Area Ratio (FAR) in the CG zoning district is 0.75.
- The existing structure has a total square footage of 5,648 on a parcel that is approximately one (1) acre. This translates to a FAR of approximately 0.13.
- Other properties in the same district are able to use their acreage and maximize the development potential in the City's commercial center; this site cannot due to the physical constraints affecting the parcel (i.e., thoroughfare rights-of-way; adjacent interior parcel; etc.).

C. That the special conditions and circumstances do not result from the action of the applicant.

The applicant has taken no actions which have resulted in the special conditions and circumstances.

- The applicant has owned the subject property since 2005.

- No significant changes have occurred on the subject property since that time.
- There have been no changes to the right-of-way for the thoroughfare streets on which the property fronts during that time either.
- The only significant change that has occurred in the immediate vicinity has been the expansion of the Hungry Howie's structure on the neighboring parcel.

D. That granting the variance will not confer on the applicant any special privilege that is denied by this ordinance to others in the same district.

The granting of this variance will not grant any special privilege to the applicant and will not place this site in any better position than any other parcel with similar zoning in the City.

- The variance would not allow the site to be used for any uses not already permitted within the existing zoning district.
- The variance would not allow the site to be developed at a greater intensity (i.e., FAR) than is permissible in the zoning district.
- The requested variance would simply allow the site to be redeveloped in a manner suitable for its location and suitable considering the existing conditions.
- Furthermore, the site is in a very unique position, in part because the existing, legal non-conforming structure on the site already encroaches on the setbacks.