

Meeting Date
March 6, 2018



AGENDA	
Section	New Business
Item No.	VI A 1

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	WAIVER RE: SIX FOOT MASONRY OR SOLID WALL FOR A SUBARU PARKING ADDITION DEVELOPER: VAHEED B. TEIMOURI DISTRICT 5 FISCAL IMPACT: NONE
DEPT/OFFICE:	PLANNING & DEVELOPMENT DEPARTMENT

Requested Action:

The applicant is requesting approval of a waiver to Section 62-3202(h)(10) to install 6' high chain link fence with white slats or 6' high vinyl fence in lieu of the 6' high masonry or solid wall required by the Land Development Code.

Summary Explanation & Background:

The applicant is requesting to install a 6' high chain link fence with white slats or a 6' high vinyl fence in lieu of a 6' high masonry or concrete wall in accordance with their Binding Development Plan (BDP). Section 62-3202(h)(10), stipulates that they construct a six-foot high masonry or solid wall along the property line abutting residential zoning classifications. The subject property abuts a residential zoning classification along the northern property line. Even though the BDP provides for a fence, the Board's approval of the waiver is required to eliminate the requirement to install a wall on the north side of the property. See attached.

The proposed development plan is 1.4 acre overflow parking lot for the Subaru of Melbourne, connecting to an existing 2.8 acre dealership on the south side. The overflow parking will provide 86 additional spaces for storing inventory to support the existing dealership. It is not intended for public use. The dealership is located on the north side of West New Haven Avenue about half a mile east of Highway I-95.

Staff has not granted approval of this waiver request, and pursuant to Section 62-3207 of the Code, requests that it be evaluated by the Board of County Commissioners. Section 62-3207 outlines the criteria that the Board should consider (below). The applicant's response is shown in **bold** and staff observations are *italicized*:

Criteria 1: The particular physical condition, shape or topography of the specific property involved causes an undue hardship to the applicant if the strict letter of the code is carried out.

Request for fence was result of adjacent property owner being offered that option at time of rezoning and decision by County Commission to make it a part of the Binding Development Plan (BDP) which was approved.

Staff has not made a finding of undue hardship.

(Continued on second page)

Reference: 17AD00021, 18WV00005

Contact: Rebecca Ragain, Assistant Director

Ext. 5-2362

Clerk to the Board Instructions:

Exhibits Attached: Application, Aerial, Binding Development Plan, Location Map

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager	Assistant County Manager John Denninghoff	Department Director / Extension
Frank Abbate	Interim Assistant County Manager Jim Liesenfelt	Tad Calkins, Planning & Development Department Ext. 5-2069

Criteria 2: The granting of the waiver will not be injurious to the other adjacent property.

Fence will not be injurious to the adjacent property owner, in fact will be a benefit.

Staff finds the adjacent properties to the north and the west are zoned RU-1-9 and improved with single family residences.

Criteria 3: The conditions upon which a request for waiver are based, are particular to the property for which the waiver is sought and are not generally applicable to other property and do not result from actions of the applicant.

See attached Binding Development Plan as approved by the Board of County Commissioners. The fence is particular to the property as it is a result of a rezoning request, and takes into account saving the heavy vegetation on a portion of the neighbor's property. It is not the results from actions of the applicant.

The applicant has an active BDP which allows a six foot high fence in lieu of a concrete block wall

Criteria 4: The waiver is consistent with the intent and purpose of the county zoning regulations, the county land use plan and the requirements of this article.

The fence is consistent with the intent and purpose in that it is being done to benefit the adjoining neighbor, and was included as part of the BDP approval by County Commission.

Staff defers to the Board of County Commissioners.

Criteria 5 & 6: Delays attributed to state or federal permits & natural disasters.

None. Make the land more available for absorption of water from natural disasters.

Criteria not applicable to this application.

Criteria 7: County land development engineer and affected agencies concur that undue hardship was placed on the applicant.

Staff defers to the Board of County Commissioners.



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

March 7, 2018

M E M O R A N D U M

TO: Tad Calkins, Planning and Development Director Attn: Rebecca Ragain

RE: Item VI.A.1., Waiver of Six Foot Masonry or Solid Wall for a Subaru Parking Addition – 18WV00005 - Vaheed B. Teimouri

The Board of County Commissioners, in regular session on March 6, 2018, granted waiver to Section 62-3202(h)(10) to install six foot high chain link fence with white slats or six foot high vinyl fence, in lieu of the six foot high masonry or solid wall required by the Land Development Code.

Your continued cooperation is greatly appreciated.

Sincerely yours,

**BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK**

Tammy Rowe, Deputy Clerk

/ds

GRAY | **ROBINSON**
ATTORNEYS AT LAW

1795 WEST NASA BLVD.
POST OFFICE BOX 1870 (32902-1870)
MELBOURNE, FLORIDA 32901
TEL 321-727-8100
FAX 321-984-4122

BOCA RATON
FORT LAUDERDALE
FORT MYERS
GAINESVILLE
JACKSONVILLE
KEY WEST
LAKELAND
MELBOURNE
MIAMI
NAPLES
ORLANDO
TALLAHASSEE
TAMPA

January 25, 2018

PHILIP F. NOHRR
Attorney
phillip.nohrr@gray-robinson.com

VIA REGULAR MAIL AND
EMAIL: James.Mann@brevardfl.gov

Jim Mann, MPA
Planner I
Brevard County Planning and Development
2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, FL 32940

RE: Brevard County Land Development Waiver Application

Dear Mr. Mann:

Enclosed please find the additional Land Development Waiver Application dealing with the request for a fence rather than a wall on the North property line. It is my understanding from our conversations that this request will be included with the one already pending, and that both will be heard by the County commission at the same time, and further that no additional fees are required. Please contact me if something further is needed; otherwise, I look forward to hearing from you as to when the Waiver will be scheduled for hearing.

Very truly yours,


Philip F Nohrr

PFN/hms
Enclosure
cc: Ted Serbousek

BREVARD COUNTY LAND DEVELOPMENT WAIVER APPLICATION

This form should be used for all waiver requests or appeals associated with the Code of Ordinances, Section 62 as it relates specifically to Unpaved Roads, Subdivisions, Minor Subdivisions, and Site Plans.

APPLICATION TYPE

- SUBDIVISION WAIVER
 UNPAVED ROAD WAIVER
 SITE PLAN WAIVER
 OTHER

Land Development Use Only

Request Date: _____ Fees \$ _____ Board Date: _____
Original Project # _____ Waiver # _____
Coordinator Initials: _____ Reference Files: _____
County Manager/Designee approval _____

Tax Parcel Identification: Twp. 28 Rng. 36 Sec. 02 S/D 25 Blk/Par 00 Lot(s) 3 (List all parcels)

Tax Account # ('s): 2800990, _____, _____ (List all account numbers)

Project Name: _____ Property Owner: GT Motors

Site Address: 108 Valencia Road, Melbourne, FL 32904

ALL CORRESPONDENCE TO BE PROVIDED TO APPLICANT AT THIS ADDRESS:

Name: Philip F. Nohr, Esq. Company: GrayRobinson, P.A.
Address: P.O. Box 1870 E-Mail philip.nohr@gray-robinson.com
City: Melbourne State FL Zip 32902-1870
Phone 321 727-8100 Fax 321 984-4122 Cell _____

ENGINEER/CONTRACTOR (if different from applicant):

Company Name: Teimouri & Associates Eng. or Proj. Mgr.: Vaheed B. Teimouri
Address: 32 East New Haven Ave., Melbourne, FL 32901 Ph # (321) 729-8382 Fax (321) 729-8969

DESCRIPTION OF WAIVER REQUEST AND CODE SECTION:

Want to install a 6' high chain link fence with white slats, or alternatively a 6' foot vinyl fence on the westerly portion of the North Property line until it connects to the existing vegetative buffer. Sec. 62-3202(h)(10)

Owner/Applicant Signature: Philip F. Nohr Print Name: Philip F. Nohr

If you wish to appeal any decision made by the county staff on the waiver, you may request the Board of County Commissioners to make a determination. Their decision approving or disapproving the waiver or interpretation is final.

Fees for Waivers are \$775.

APPLICATION FEES: A schedule of fees and charges for review is established and adopted by the Board of County Commissioners of Brevard County, Florida, and may, from time to time, be amended.

PLEASE MAKE CHECKS PAYABLE TO: THE BOARD OF COUNTY COMMISSIONERS

LAND DEVELOPMENT APPLICATIONS – DOCUMENT SUBMITTAL REQUIREMENTS

Application type	Application	Waiver Criteria below	Alternative Plan Design				8 1/2 x 11 vicinity map		Fees
Waiver - Site Plan	1	Y	-		-	-	1	-	Y
Waiver - Subdivision	1	Y	-				1		Y

WAIVER CRITERIA (SUBDIVISION, UNPAVED ROADS & SITE PLANS)

For a waiver to be considered and approved by staff, your request must comply with all of the following criteria. Please explain, in detail, how your request meets the following conditions:

- The particular physical conditions, shape or topography of the specific property involved causes an undue hardship to the applicant if the strict letter of the code is carried out.
Request for fence was result of adjacent property owner being offered that option at time of rezoning hearing and decision by County Commission to make it a part of the Blinding Development Plan (BDP) which was approved and attached herein.
- The granting of the waiver will not be injurious to the other adjacent property.
Will not be injurious to the adjacent property owner, and in fact will be a benefit.
- The conditions, upon which a request for waiver are based, are particular to the property for which the waiver is sought and are not generally applicable to other property and do not result from actions of the applicant.
Is particular to the property as it is a result of a rezoning request, and takes into account saving the heavy vegetation on a portion of the neighbor's property. It is not the results from actions of the applicant.
- The waiver is consistent with the intent and purpose of the county zoning regulations, the county land use plan of the county and the requirements of this article.
It is consistent with the intent and purpose in that it is being done to benefit the adjoining neighbor, and was included as part of the BDP approval by County Commission.
- Delays attributed to state or federal permits.
None.
- Natural disasters.
None.
- County development engineer and affected agencies concur that an undue hardship was placed on the applicant. (To be filled out by County staff)

RESOLUTION NO. 16PZ00094

On motion by Commissioner Isnardi, seconded by Commissioner Pritchett, the following resolution was adopted by a unanimous vote:

WHEREAS, G.T. MOTORS has requested a Small Scale Plan Amendment (16S.09) to change the Future Land Use designation from NC (Neighborhood Commercial) to CC (Community Commercial), and a change of zoning classification from RU-1-9 (Single-Family Residential) to BU-1 (General Retail Commercial), on property described as Lot 3, Valencia Acres, a subdivision of Lots 22 & 27, plat filed in Deed Book 339, Page 146, of the Public Records of Brevard County, Florida. (1.4 acres) Located on the east side of Valencia Rd., approx. 400 ft. north of W. New Haven Ave. (108 Valencia Rd., Melbourne)

Section 02, Township 28 S, Range 36 E, and,

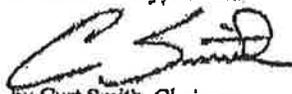
WHEREAS, a public hearing of the Brevard County Planning & Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning & Zoning Board/Local Planning Agency recommended that the application be approved(*) with a BDP (Binding Development Plan) restricting deliveries to the existing service entrance for the existing dealership approximately 350 ft. north of W. New Haven Ave., and no use of Valencia Rd., including the loading and unloading of inventory; and,

WHEREAS, the Board, after considering said application and the Brevard County Planning & Zoning Board's recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be Approved as recommended; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested Small Scale Plan Amendment to change the Future Land Use designation from NC to CC, and a change of classification from RU-1-9 to BU-1, be APPROVED with a BDP, recorded in ORB 7846, Pages 2781 - 2784, dated March 22, 2017, restricting deliveries to the existing service entrance for the existing dealership approximately 350 ft. north of W. New Haven Ave., and no use of Valencia Rd., including the loading and unloading of inventory, and that the zoning classification relating to the above described property be changed to BU-1, and the Planning & Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

BE IT FURTHER RESOLVED that this resolution shall become effective as of March 22, 2017.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida


by Curt Smith, Chairman
Brevard County Commission

As approved by Brevard County Commission on March 21, 2017.

ATTEST:

SCOTT ELLIS, CLERK
(SEAL)



(P&Z Hearing - January 9, 2017)
(*) LPA Recommendation - Approved Small Scale Plan Amendment
(BCC Zoning Hearing - February 2, 2017)

Please note: A Conditional Use Permit will generally expire on the three year anniversary of its approval if the use is not established prior to that date. Conditional Use Permits for Towers and Antennas shall expire if a site plan for the tower is not submitted within one (1) year of approval or if construction does not commence within two years of approval. A PUD Preliminary Development Plan expires if a final development plan is not filed within three years.

THE GRANTING OF THIS ZONING DOES NOT GUARANTEE PHYSICAL DEVELOPMENT OF THE PROPERTY. AT THE TIME OF DEVELOPMENT, SAID DEVELOPMENT MUST BE IN ACCORDANCE WITH THE CRITERIA OF THE BREVARD COUNTY COMPREHENSIVE PLAN AND OTHER APPLICABLE LAWS AND ORDINANCES

Prepared by: Philip F. Nohrr, Esq.
Address: Gray Robinson, P.A.
P.O. Box 1870
Melbourne, FL 32902-1870

CFN 2017059058, OR BK 7846 PAGE 2781.
Recorded 03/22/2017 at 03:55 PM, Scott Ellis, Clerk of Courts,
Brevard County
Pgs: 4

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 21 day of MARCH, 2017 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and G.T. MOTORS, INC., a Florida corporation (hereinafter referred to as "Developer/Owner").

RECITALS

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer/Owner has requested a future land use change to Community Commercial ("CC") and zoning of BU-1 in order to develop its Property for parking in connection with its adjacent automotive dealership to the South, and pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impact on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.

2. Developer/Owner shall tear down and remove any existing structures and fencing on the Property, and install a six (6') foot high chain-link fencing with white slats or alternatively a six (6') foot white vinyl fence on the Property facing Valencia Road, and on the Westerly portion of the North Property line of the Property until it connects to the existing vegetative buffer with said fencing and landscape buffer being in accordance with Brevard County Code.

3. No access to the Property shall be allowed from Valencia Road.

4. Developer/Owner, who owns the real property adjacent to the South of Property ("Parcel 2"), agrees that the loading and unloading of automobiles delivered to its dealership shall not occur within the Valencia Roadway, but rather the automobiles shall be loaded and unloaded on Parcel 2 through Parcel 2's northern most driveway on Valencia Road which is approximately 350 feet North of West New Haven Avenue. The carriers delivering the vehicles shall not load or unload any vehicles on the Valencia Road right-of-way.
5. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This agreement provides no vested rights against changes to the Comprehensive Plan or land development regulations as they may apply to this Property.
6. Developer/Owner, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in the Public Records of Brevard County, Florida.
7. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on _____. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.
8. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as may be amended.
9. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 8 above.
10. Per the attached Statement by Ted Serbousek, Vice President of Developer/Owner Property is free and clear of any mortgages or encumbrances.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA
2725 Judge Fran Jamleson Way
Viera, FL 32940

STATE OF FLORIDA
COUNTY OF BREVARD
This is to certify that the foregoing
is a true and correct copy of the original
and official records of this office.
witness my hand and seal of office
this 21 day of March, 2017
SCOTT ELLIS, Clerk of Circuit Court
BY [Signature] D.C.

(Please note: You must have two witnesses and a notary for each signature required. The notary may serve as one witness.)

WITNESSES:

[Signature]
Amy Graham
(Witness Name typed or printed)

[Signature]
April Blodgett
(Witness Name typed or printed)

DEVELOPER/OWNER
G.T. MOTORS, INC.
4340 W. New Haven Avenue
West Melbourne, FL 32904
(Address)

[Signature]
(Vice President)
Ted Serbousek
(Name typed, printed or stamped)

STATE OF Florida §
COUNTY OF Volusia §

The foregoing instrument was acknowledged before me this March 1 day of, 2017 by Ted Serbousek, Vice President of G.T. Motors, Inc., who is personally known to me or who has produced _____ as identification.

My commission expires
SEAL
Commission No.

[Signature]
Notary Public
(Name typed, printed or stamped)

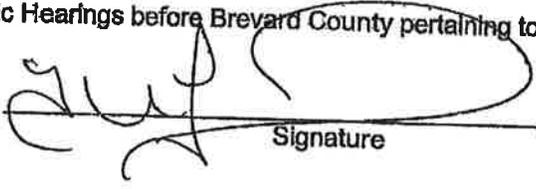


FORM "A"
AUTHORIZATION TO ACT AS APPLICANT

Ted Serbousek, Vice President of

I, GT Motors, Inc. authorize Philip F. Nohr, Esq./GrayRobinson, P.A.

to act as applicant, representing me in Public Hearings before Brevard County pertaining to Land Use.

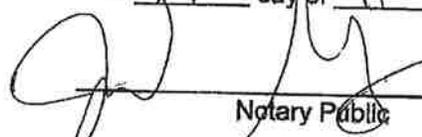


Signature

Volusia
State of Florida, County of ~~Brevard~~
Sworn and subscribed to before me

This 14 day of 11 2017 Personally Known

Form of Identification



Notary Public

My Commission Expires:



Subaru Parking Addition



Zoning **Parking Addition Site**

Section **Existing Dealership**

CAPE CANAVERAL

COCOA

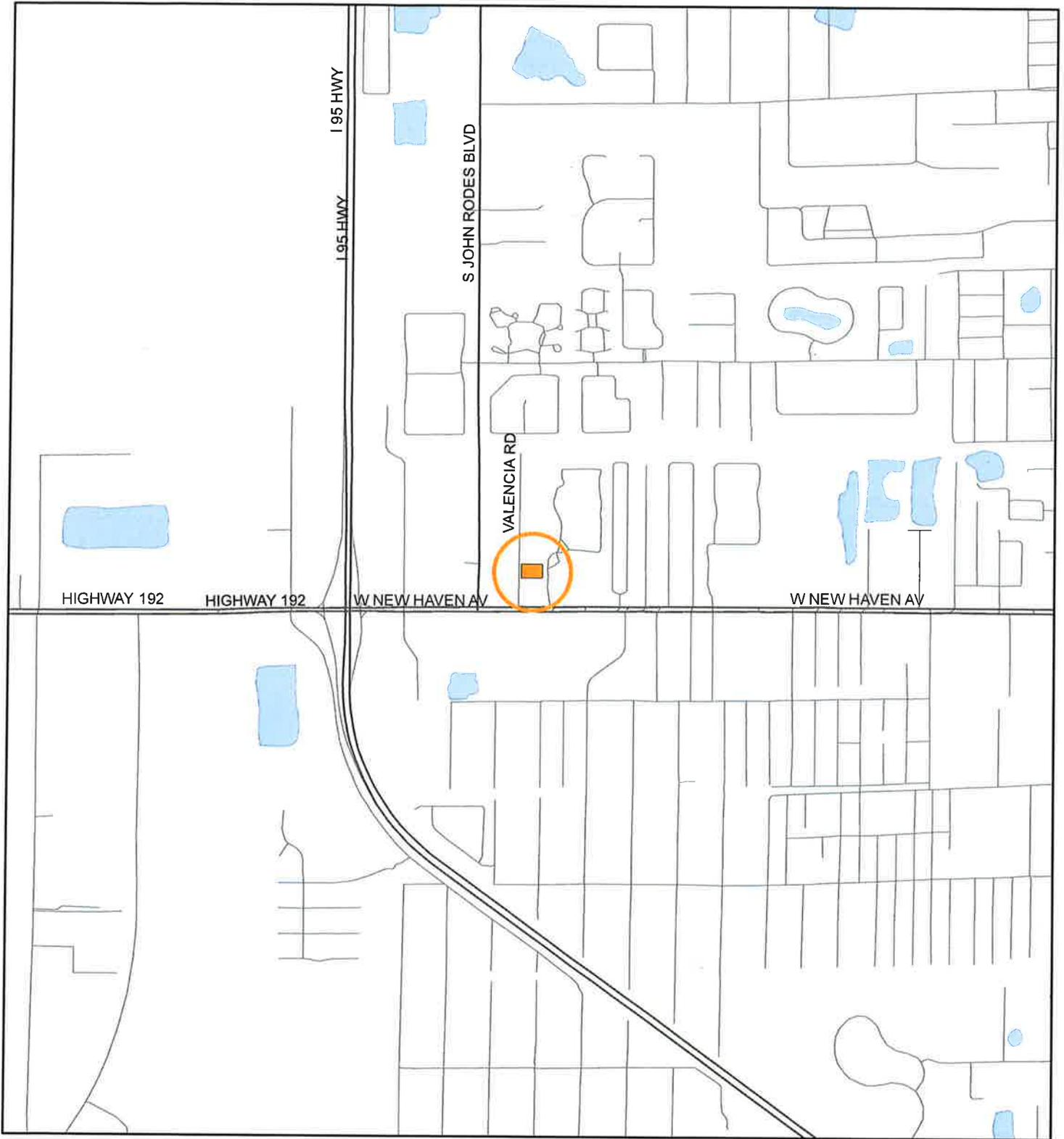
Scale: 1:2,400
 0 100 200 400 Feet
 0 25 50 100 Meters

North Arrow

LOCATION MAP

SUBARU PARKING ADDITION

17AD00021



1:24,000 or 1 inch = 2,000 feet

 Subject Property

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by the Brevard County Planning and Zoning Office - GIS Section Date: 12/13/2017