



Application No.:

V-2018-046

Attachment "B"

Variance Application

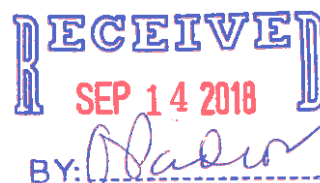
Publix Supermarkets

VARIANCE

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A VARIANCE APPLICATION FOR PUBLIX SUPERMARKETS, EAST OF OLD CUTLER ROAD, WEST OF SW 92ND PLACE, NORTH OF SW 212 STREET, AND SOUTH OF SW 208TH STREET, TO PERMIT THREE (3) WALL SIGNS WHERE ONE (1) IS PERMITTED; AND PROVIDING FOR AN EFFECTIVE DATE.



DEPARTMENT OF COMMUNITY DEVELOPMENT
PLANNING AND ZONING



VARIANCE APPLICATION

LIST ALL FOLIO #S: 36-6009-006-0012 & 36-6009-005-0010 & 36-6009-006-0010

DATE RECEIVED: April 23, 2018

PROPOSED PROJECT NAME: Shoppes of Cutler Bay

- 1. NAME OF APPLICANT** (Provide complete name of applicant, exactly as recorded on deed, if applicable. If applicant is a lessee, an executed 'Owner's Sworn-to-Consent' and copy of a valid lease for 1 year or more is required. If the applicant is a corporation, trust, partnership, or like entity, a 'Disclosure of Interest' is required).

Publix Super Markets, Inc.

2. APPLICANT'S MAILING ADDRESS, TELEPHONE NUMBER:

Mailing Address: 3300 Publix Corporate Parkway

City: Lakeland State: FL Zip: 33811 Phone#: 863.688.1188

3. OWNER'S NAME, MAILING ADDRESS, TELEPHONE NUMBER:

Owner's Name (Provide name of ALL owners): [Same as Applicant plus] GCF Investments, Inc.

Mailing Address: 2000 South Bayshore Drive, Villa 38

City: Miami State: FL Zip: 33133 Phone#: 305.789.7462

4. CONTACT PERSON'S INFORMATION:

Name: Amanda M. Naldjjeff, Esq. Company: Holland & Knight LLP

Mailing Address: 701 Brickell Avenue, Suite 3300

City: Miami State: FL Zip: 33131

Phone# 305.789.7462 Fax# 305.789.7799 E-mail: amanda.naldjjeff@hkiaw.com





5. LEGAL DESCRIPTION OF ALL PROPERTY COVERED BY THE APPLICATION

(Provide complete legal description, i.e., lot, block, subdivision name, plat book & page number, or metes and bounds. Include section, township, and range. If the application contains multiple rezoning requests, then a legal description for each sub-area must be provided. Attach separate sheets, as needed).

See Attached "Exhibit A"

6. ADDRESS OR LOCATION OF PROPERTY (For location, use description such as NE corner of, etc).

East of Old Cutler Road, between SW 208th Street and SW 212th Street

7. SIZE OF PROPERTY (in acres): ^{13.18 gross} _____ (divide total sq. ft. by 43,560 to obtain acreage)

8. DATE PROPERTY ☒ acquired ☐ leased: 01/15/2014 & 10/15/1986 & 01/29/86

9. LEASE TERM: N/A Years (Month & year)

10. IF CONTIGUOUS PROPERTY IS OWNED BY THE SUBJECT PROPERTY OWNER(S), provide Complete legal description of said contiguous property.

See Attached "Exhibit B"



11. Is there an option to purchase ☐ or lease ☐ the subject property or property contiguous thereto? ☒ no ☐ yes (if yes, identify potential purchaser or lessee and complete 'Disclosure of Interest' form)

N/A

12. PRESENT ZONING AND FLU CLASSIFICATION: FLU: Mixed Use; Present Zoning: NC-1

13. PROPOSED USE OF PROPERTY (describe nature of the request in space provided)

Request for variance from Town of Cutler Bay Land Development Code Section 3-114(B) requesting two (2) additional wall signs for a total of three (3) wall signs.

See attached Letter of Intent.

14. Has a public hearing been held on this property within the last year & a half?

☒ No ☐ yes.

If yes, provide applicant's name, and date, purpose and results of hearing, and resolution number:

15. Is this hearing a result of a violation notice?

☒ No ☐ yes. If yes, give name to whom the Violation notice was served and describe the violation:

16. Does property owner own contiguous property to the subject property? If so, give complete legal description of entire contiguous property:

See Attached Exhibit B

17. Is there any existing use on the property? ☐ No ☐ yes. If yes, what use and when established?

Use: Agricultural (farming)

Year: 1986



18. Submitted Materials Required:

Please check all that Apply:

- ☒ Letter of intent
- ☒ Justifications for change
- ☐ Statement of hardship (N/A)
- ☒ Proof of ownership or letter from owner
- ☐ Power of attorney (N/A)
- ☐ Contract to purchase (if applicable) (N/A)
- ☐ Current survey (2 original sealed and signed and 10 reduced 11x17 copies) (N/A)
- ☐ Complete set of plans 24"x36", scale 1"=50' (2 original sealed and signed and 10 reduced 11x17 copies) (N/A)
- ☐ Colored rendering of all 4 sides of each proposed building (if applicable) (N/A)
- ☐ 20% Property owner signatures (if required) (N/A)
- ☐ Mailing Labels (set amount depends on number of hearings) and map (if required) (N/A)
- ☒ Required Fee(s) (\$5,000.00)
- ☐ Plans must be approved by Miami-Dade County Fire and Rescue (at building permit) Department with an original stamp and signature from the Fire Dept.
- ☒ Necessary documentation from DERM and WASD (service availability)





APPLICANT'S AFFIDAVIT

The Undersigned, first being duly sworn depose that all answers to the questions in this application, and all supplementary documents made a part of the application are honest and true to the best of (my)(our) knowledge and belief. (I)(We) understand this application must be complete and accurate before the application can be submitted and the hearing advertised.

OWNER OR TENANT AFFIDAVIT

(I)(WE), _____, being first duly sworn, depose and say that (I am)(We are) the ☐ owner ☐ tenant of the property described and which is the subject matter of the proposed hearing.

Signature

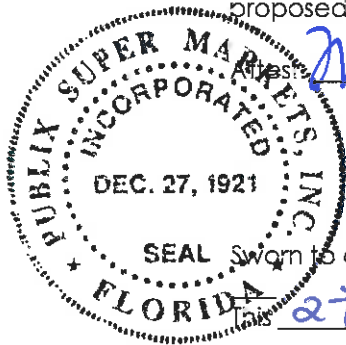
Signature

Sworn to and subscribed to before me
This _____ day of _____, _____

Notary Public: _____
Commission Expires: _____

CORPORATION AFFIDAVIT

(I)(WE), William W. Rayburn, IV of Publix Super Markets, Inc., being first duly sworn, depose and say that (I am)(We are) the ☐ President ☐ Vice-President ☐ Secretary ☐ Asst. Secretary of the aforesaid corporation, and as such, have been authorized by the corporation to file this application for public hearing; and that said corporation is the ☐ owner ☐ tenant of the property described herein and which is the subject matter of the proposed hearing.



(Corp. Seal)

Sworn to and subscribed to before me
This 27th day of April, 2018

William W Rayburn, IV
Authorized Signature

Vice President of Real Estate Assets

Office Held

Notary Public: Patricia Cooley

Commission Expires: _____



PATRICIA COOLEY
MY COMMISSION # FF 114839
EXPIRES: August 20, 2018
Bonded Thru Budget Notary Services



PARTNERSHIP AFFIDAVIT

(I)(WE), _____, being first duly sworn, depose and say that
 (I am) (We are) partners of the hereinafter named partnership, and as such, have been authorized to file this application for a public hearing; and that said partnership is the owner or tenant of the property described herein which is the subject matter of the proposed hearing.

By _____ %
 By _____ %

 (Name of Partnership)
 By _____
 By _____

Sworn to and subscribed to before me
 This _____ day of _____, _____

Notary Public: _____
 Commission Expires: _____

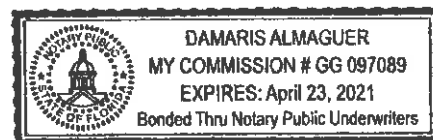
ATTORNEY AFFIDAVIT

I, Amanda M. Naldjieff, Esq., being first duly sworn, depose and say that I am a State of Florida Attorney at Law, and I am the Attorney for the Owner of the property described and which is the subject matter of the proposed hearing.


 Signature

Sworn to and subscribed to before me
 This 27th day of April, 2018

Notary Public: 
 Commission Expires: _____





RESPONSIBILITIES OF THE APPLICANT

I AM AWARE THAT:

1. The Department Environmental Resources Management (DERM), and other agencies review and critique zoning applications which may affect the scheduling and outcome of applications. These reviews may require additional public hearings before DERM's Environmental Quality Control Board (EQCB), or other boards, and /or the proffering of agreements to be recorded. I am also aware that I must comply promptly with any DERM conditions and advise this office in writing if my application will be withdrawn.
2. Filing fees may not be the total cost of a hearing. Some requests require notices to be mailed to property owners up to a mile from the subject property, in addition to mailing costs, fees related to application changes, plan revisions, deferrals, re-advertising, etc., may be incurred. Application withdrawn within 30 days of the filing are eligible for a refund of 25% of the hearing fee but after that time hearings withdrawn or returned will be ineligible for a refund. I understand that fees must be paid promptly.
3. The South Florida Building Code requirements may affect my ability to obtain a building permit even if my zoning application is approved; and that a building permit will probably be required. I am responsible for obtaining permits and inspections for all structures and additions proposed, or built without permits. And that a Certificate of Use and Occupancy must be obtained for the use of the property after it has been approved at Zoning Hearing, and that failure to obtain the required permits and/or Certificates of Completion or of Use and Occupancy will result in enforcement action against any occupant and owner. Submittal of the Zoning Hearing application may not forestall enforcement action against the property.
4. The 3rd District Court of Appeal has ruled that zoning applications inconsistent with the Comprehensive Development Master Plan (CDMP) cannot be approved by a zoning board based upon considerations of fundamental fairness. Therefore, I acknowledge that if the hearing request is inconsistent with the CDMP and I decide to go forward then my hearing request can only be denied or deferred, but not approved.
5. In *Miami-Dade County v. Omnipoint Holdings, Inc.* Case No. 3d01-2347 (Fla. 3rd DCA 2002), the 3rd District Court of Appeal has held invalid the standards for non-use variances, special exceptions, unusual uses, new uses requiring a public hearing and modification of covenants. This is not a final decision and the County Attorney's Department professional staff to develop new standards that will address the Court's concerns. While the new standards are being developed, applicants are advised that any non-use variance, special exception, unusual use, new use requiring a public hearing or request for modification of covenants granted under the existing standards are subject to being reversed in the courts. An applicant wishing to avoid the substantial legal risks associated with going forward under the existing standard may seek a deferral until the new standards are developed.
6. Any covenant to be proffered must be submitted to the Town of Cutler Bay Legal Counsel, on Town form, at least 1 month prior to the hearing date. The covenant will be





reviewed and the applicant will be notified if changes or corrections are necessary. Once the covenant is acceptable, the applicant is responsible to submit the executed covenant with a current 'Opinion of Title' within 1 week of the hearing. And that Legal Counsel must carry a cover letter indicating subject matter, application number and hearing date.

7. The Town of Cutler Bay Department of Public Works reviews and critiques Zoning applications and may require conditions for approval.
8. Each party will be limited to a presentation of 20 minutes. This time limitation may be extended by the Chair of the meeting.
9. **THE APPLICANT IS RESPONSIBLE FOR TRACKING THE STATUS OF THE APPLICATION AND ALL HEARINGS THAT MAY BE ASSOCIATED WITH THIS APPLICATION.**

William W. Rayburn, IV
(Applicant's Signature)

William W. Rayburn, IV as Vice President of Real Estate
Assets of Publix Super Markets, Inc.

Sworn to and subscribed before me this 27th day of April, 2018.

Affiant is personally known to me or has produced _____ as
identification.

Patricia Cooley
(Notary Public)



PATRICIA COOLEY
MY COMMISSION # FF 114839
EXPIRES: August 20, 2018
Bonded Thru Budget Notary Services

My Commission Expires: _____



DISCLOSURE OF INTEREST

If the property, which is the subject of the Application, is owned or leased by a **CORPORATION**, list the Principal Stockholders and the percentage of stock owned by each. NOTE: Where the Principal Officers or Stockholders consist of another Corporation(s), Trustee(s), Partnership(s) or other similar entities, further disclosure shall be required which discloses the identity of the individual(s) (natural persons) having the ultimate ownership interest in the aforementioned entity.

Publix Super Markets, Inc.
Corporation Name

Name, Address and Office

Percentage of stock

* For disclosure purposes, there are only two shareholders that own more than 5% of the company's outstanding common stock:

1. Employee Stock Ownership Plan

27 %

2. 401(k) Plan

9.43 %

If the property, which is the subject of the Application, is owned or leased by a **TRUSTEE**, list the Principal Stockholders and the percentage of stock owned by each. NOTE: Where the Principal Officers or Stockholders consist of another Corporation(s), Trustee(s), Partnership(s) or other similar entities, further disclosure shall be required which discloses the identity of the individual(s) (natural persons) having the ultimate ownership interest in the aforementioned entity.

Trust Name

Name, Address and Office

Percentage of stock

If the property, which is the subject of the Application, is owned or leased by a **PARTNERSHIP or LIMITED PARTNERSHIP**, list the Principal Stockholders and the percentage of stock owned by each. NOTE: Where the Principal Officers or Stockholders consist of another Corporation(s), Trustee(s), Partnership(s) or other similar entities, further disclosure shall be required which discloses the identity of the individual(s) (natural persons) having the ultimate ownership interest in the aforementioned entity.

Partnership or Limited Partnership Name

Name, Address and Office

Percentage of stock



COST RECOVERY AFFIDAVIT

I hereby acknowledge and consent to the payment of **all applicable fees** involved as part of my application process. These fees include but are not limited to: application fees, postage, advertising, and attorney fees **regardless of the outcome of the public hearing.**

Please type or print the following:

Date: April 23, 2018

Public Hearing No. _____

Full Name:

I Mr. Mr. William W. Rayburn, IV as Vice President of Real Estate Assets of Publix Super Markets, Inc.

Current Address: 3300 Publix Corporate Parkway City: Lakeland

State: Florida Zip: 33811 Telephone Number (863) 688-1188

Date of Birth: N/A

William W Rayburn, IV
Signature

SWORN AND SUBSCRIBED BEFORE ME THIS 27th DAY OF April, 2018

Patricia Cooley
Notary Public, State of Florida at Large



PATRICIA COOLEY
MY COMMISSION # FF 114839
EXPIRES: August 20, 2018
Bonded Thru Budget Notary Services

My Commission expires 20

Pursuant to Ordinance No. 2000-09-33-Cost Recovery

Holland & Knight

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Holland & Knight LLP | www.hklaw.com

Hugo P. Arza, Esq.
305-789-7783
hugo.arza@hklaw.com

VIA HAND DELIVERY

September 11, 2018

Ms. Kathryn Lyon
Planning and Zoning Director
Town of Cutler Bay
Development Services Division
10720 Caribbean Boulevard, Suite 105
Cutler Bay, Florida 33189

Re: Shoppes of Cutler Bay / Letter of Intent / Variance Application (#4) to allow Three (3) Wall Signs where One (1) Wall Sign is Permitted

Dear Ms. Lyon:

This law firm represents Publix Super Markets, Inc. (the "Applicant"), in connection with a proposed development on the property located east of Old Cutler Road, between SW 208th Street and SW 212th Street (the "Property"), in the Town of Cutler Bay, Florida (the "Town"), as further identified by Miami-Dade County Folio Nos. 36-6009-006-0012, 36-6009-005-0010, and 36-6009-006-0010. This letter shall serve as the Applicant's letter of intent in support of the enclosed Variance Application (the "Application"), pursuant to Section 3-114(B) of the Town's Code of Ordinances (the "Code"). The purpose of the Application is to seek the approval of a variance from the requirements contained in Article VIII, Section 3-114(B), "Permanent Signs," to allow two (2) additional wall signs for a total of three (3) wall signs where one (1) wall sign is permitted. The Applicant has also filed concurrent applications for additional variances, conditional use permits, the site plan, and a tentative plat.

Property. The Property is approximately +/- 13.18 gross acres (12.68 net acres) of vacant land located east of Old Cutler Road, between SW 208th Street and SW 212th Street. The Property has a land use designation of "Mixed Use." The "Mixed Use" land use category envisions that this area along the Old Cutler Road corridor be redeveloped as a place where living, working, shopping, and civic activities can take place within a town center type environment. Such new development and redevelopment shall consist of a variety of buildings and uses that will encourage pedestrian activity with wide sidewalks, outdoor cafes, squares, and plazas. The Town shall support the location of employment centers, offices, and retail uses proximate to residential areas through the implementation of the Town Center and Mixed Use land use districts, in accordance with the Town's Growth Management Plan.

The Property is zoned "NC-1" or "Neighborhood Central District," which provides for the location of pedestrian scaled shops, restaurants, services, small workplaces, and residential buildings central to a neighborhood and within walking distance of dwellings. Uses in the district will have a primary market area of three miles and are intended to service the daily needs of the residents of the surrounding neighborhoods.

Project. Accompanying this Application are plans for the proposed "Shoppes of Cutler Bay," as prepared by Zamora & Associates, Inc. on September 9, 2018. As shown on the Site Plan, the Applicant's proposed project contemplates the development of a town center type plaza, which provides neighboring

Ms. Kathryn Lyon
 September 11, 2018
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residences with convenient access to a premier quality food retailer, as well as a pharmacy, liquor store, restaurant and retail store, to serve the daily needs of the residents of the surrounding area.

Application. Section 3-36, "Variance" provides the framework for the Town of Cutler Bay to approve a variance. In particular, Section 3-36(1) sets forth "Application" requirements for any variance application, while Section 3-36(2) sets forth "Approval Standards" for the Town of Cutler Bay Town Council to consider in evaluating a variance application and deciding whether to approve such variance

Pursuant to Section 3-36 (1) a. - f. of the Town Code, the following information is presented in support of this request for the Town's consideration:

- The Applicant seeks relief from Article VIII, Section 3-114(B), Permanent Signs, of the Code.
- The Property is zoned NC-1 or "Neighborhood Central District."
- The development of the Property as a commercial shopping center, and the size of the Property, along with the distance of the buildings from the roadways prevents strict compliance with Article VIII, Section 3-114(B), Permanent Signs, of the Code. The additional wall signs reflect the multi-purpose nature of the Publix store which includes grocery, pharmacy, and liquor sales.
- Strict compliance with Article VIII, Section 3-114(B), Permanent Signs, of the Code would create a hardship with respect to the visibility of the signage on the Property by vehicular traffic and would be detrimental to the success of the neighborhood retail facility.

Pursuant to Section 3-36 (2) of the Town Code, we note the following observations in support of the approval of the variance:

- *The variance will result in conditions that maintain and are consistent in all material respects with the intent and purpose of these Regulations and that the general welfare, stability, and appearance of the community will be protected and maintained.* Section 3-3 of the Code, "Purpose" provides that the purpose of the Code is to "ensure that growth forms an integral part of functioning neighborhoods, retail and commercial centers... and enhances the quality of life for the entire Town to ensure the greatest possible economic and social benefits for all residents." (emphasis added) Allowing for a variance from the strict requirements of the "Permanent Signs" section of the Code creates a more effective Site Plan and commercial development, increases the visibility of the development, and provides for a better functioning retail and commercial center.
- *The variance will be compatible with the surrounding land uses, and otherwise consistent with these regulations and the comprehensive plan, and will not be detrimental to the community.* As noted above, the requested variance is consistent with the Code. Moreover, the Property is located in a Mixed Use future land use category that provides for commercial and retail service and encourages pedestrian activity. As such, it is imperative that the site plan, including required landscaping, be designed and positioned in a way that logistically encourages and provides for implementation of these objectives and the most beneficial use of the Property.
- *The request for a variance is not based on an economic disadvantage to the owner or occupant of the property upon which the variance is sought.* The request is based on the needs of the community and this particular site plan, is being made in accordance with the intent and purpose of the Code,

Ms. Kathryn Lyon
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and is not based on an economic disadvantage that would be caused by complying with the requirement.

Based on the foregoing, we respectfully request your favorable consideration of this Application. Thank you for your help and should you have any questions or concerns, please do not hesitate to contact our office.

Respectfully submitted,

HOLLAND & KNIGHT LLP



Hugo P. Arza

THOMAS

Fax: 727-573-0328

Scale: $\frac{3}{64}'' = 1'-0''$