



# MEMORANDUM

## MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

**To:** Monroe County Planning Commission

**Through:** Mayté Santamaria, Senior Director of Planning & Environmental Resources

**From:** Kevin Bond, AICP, Planning and Development Review Manager

**Date:** January 6, 2017

**Subject:** *Request for Variance to access standards on property located at 101000 Overseas Highway, Key Largo, Real Estate Number 00087350-000000 (File # 2016-214)*

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**Meeting:** January 25, 2017

I REQUEST:

The applicant is requesting a Variance to the access standards in Chapter 114, Article VII of the Land Development Code (LDC). Approval would result in two curb cuts to U.S. 1 that are spaced less than 400 feet from each other and an existing street on the same side of U.S. 1. The variance is requested for the two U.S. 1 curb cuts associated with the proposed development of a proposed 3,116-square-foot commercial retail McDonald’s restaurant with a drive-through and a new 5,000-square-foot retail building, being reviewed separately under an application for a Major Conditional Use Permit (File # 2015-163).



*Subject Property (center) with Land Use (Zoning) Districts, 2015 Aerial*

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1 **II BACKGROUND INFORMATION:**

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3 **Location:** Key Largo near U.S. 1 Mile Marker 101 bay side

4 **Address:** 101000 Overseas Highway

5 **Legal Description:** That portion of Lot 8 in Section 28, Township 61 South, Range 39 East,  
6 on Key Largo, according to Model Land Company's Plat by P. F. Jenkins, Civil Engineer,  
7 recorded in Plat Book 1 at Page 68, of the public records of Monroe County, Florida, lying  
8 Northwesterly of State Road No.5 (U.S. No. 1), Key Largo, Monroe County, Florida

9 **Real Estate (RE) Number:** 00087350-000000

10 **Property Owner/Applicant:** Key Largo Tree, LLC

11 **Agent:** Chris Collins, CPH, Inc.

12 **Size of Site:** 144,155 square feet / 3.31 acres (per submitted plans)

13 **Land Use District:** Suburban Commercial (SC)

14 **Future Land Use Map (FLUM) Designation:** Mixed Use/Commercial (MC)

15 **Tier Designation:** III (Infill Area)

16 **Flood Zone:** X

17 **Existing Uses:** Commercial retail, outdoor retail sales, storage areas

18 **Existing Vegetation / Habitat:** Developed/disturbed

19 **Community Character of Immediate Vicinity:** Conservation land and undeveloped  
20 hammock parcels to the north, west and east; residential uses (including Caloosa  
21 Campground to the northwest, Newport Village to the southeast, single- and multi-family  
22 residential uses to the south) and light manufacturing (Paradise Pit) to the southeast.

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24 **III RELEVANT PRIOR COUNTY ACTIONS:**

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26 On December 16, 2013, the Planning Director issued a Letter of Understanding (File # 2013-  
27 089) for the proposed development to demolish part of the existing commercial retail  
28 building and construct new nonresidential buildings for commercial retail, restaurant and  
29 light industrial storage uses.

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31 On August 26, 2015, a Major Conditional Use Permit application (File # 2015-163) was  
32 received by the Planning & Environmental Resources Department. The Major CUP was  
33 reviewed by the Development Review Committee on July 25, 2016.

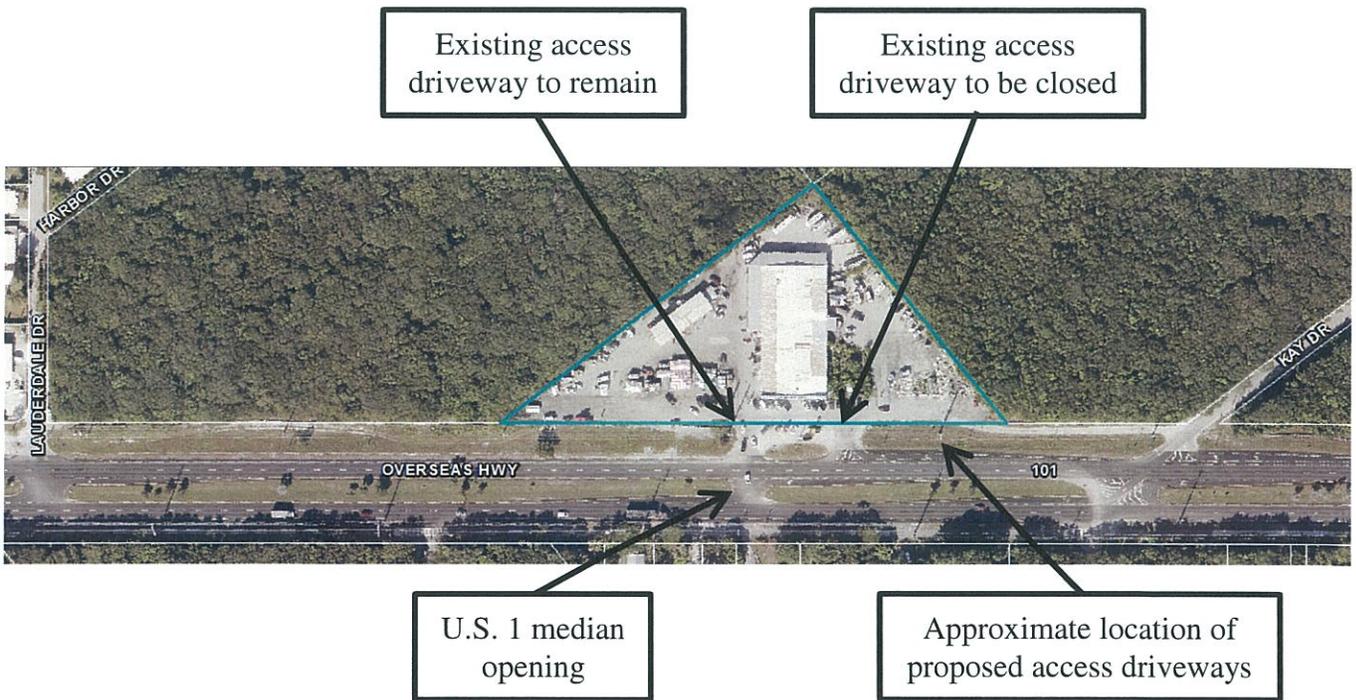
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35 On September 28, 2016, the Planning Commission approved a variance (File # 2016-128) of  
36 15 feet to the required 25-foot primary front yard setback, which is adjacent to Overseas  
37 Highway (U.S. 1) right-of-way, resulting in a primary front yard setback of 10 feet. The  
38 variance was requested for the 24-foot-wide drive aisle running parallel with U.S. 1  
39 associated with the proposed development of a proposed 3,116-square-foot commercial retail  
40 McDonald's restaurant with a drive-through and a new 5,000-square-foot retail building,  
41 being reviewed separately under the above Major Conditional Use Permit application.

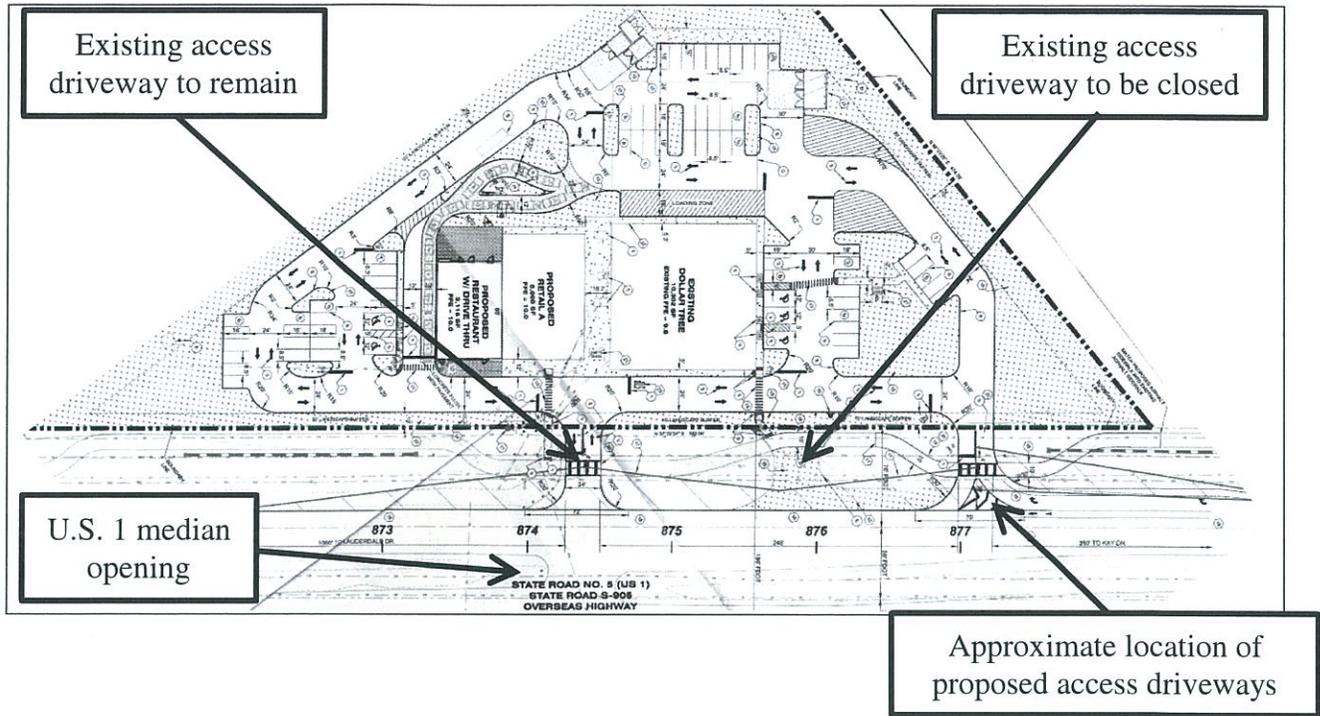
1 IV REVIEW OF APPLICATION:

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3 Pursuant to LDC Section 114-195, *Major road access*, “no structure or land shall be  
4 developed, used or occupied unless direct access to U.S. 1 or County Road 905 is by way of  
5 a curb cut that is spaced at least 400 feet from any other curb cut that meets the access  
6 standards of the Florida Department of Transportation or an existing street on the same side  
7 of U.S. 1 or County Road 905.”  
8

9 The two existing curb cuts are currently spaced approximately 120 feet from each other and  
10 would be considered nonconforming access. Pursuant to LDC Section 114-199,  
11 *Nonconforming access*, “no use fronting on U.S. 1 or County Road 905 shall receive a permit  
12 for a change of use, expansion or reconstruction unless it is brought into conformance with  
13 [LDC Chapter 114, Article VII] by provision of combined drives or parallel access.”  
14

15 The proposed development of the associated Major CUP involves the reconstruction of  
16 existing commercial retail square footage on the property. No change of use or expansion of  
17 nonresidential floor area is proposed. As part of the proposed development, the two existing  
18 access driveways to Overseas Highway / U.S. 1 would be maintained. However, the  
19 applicant is proposing to relocate the northern driveway further to the north in order to  
20 increase the spacing between the two driveways from 120 to 248 feet. This would meet  
21 FDOT standards; however, this is still nonconforming to the 400-foot County requirement  
22 and would create a new nonconformity by reducing the spacing between the northern  
23 driveway and Kay Drive to the north from approximately 483 feet to 350 feet. The following  
24 figures show the existing and proposed locations of the access driveways and the current U.S.  
25 1 median opening.  
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Pursuant to LDC Section 102-187, the Planning Commission is authorized to grant variances to the access standards in LDC Chapter 114, Article VII, in accordance with the standards in LDC Section 102-186(f).

*Pursuant to LDC Section 102-186, a variance may only be granted if the applicant demonstrates that all of the following standards are met:*

(1) *The applicant demonstrates a showing of good and sufficient cause:*

The applicant states, “In the present condition, the property has two existing driveways that are spaced approximately 115’ away from each other which is not in accordance with FDOT or Monroe County standards. We are seeking to close the existing northern entrance and construct a new right-in/right-out driveway further north along our property. The new proposed driveway meets FDOT Access Management Standards in regards to spacing between driveways along this roadway segment as well as Kay Drive to the north. The new proposed driveway will meet the new, but not yet effective LDC Section 114-195. There is presently an appeal to this code section that is unrelated to driveway spacing.”

Staff does not disagree with the applicant’s statement regarding good and sufficient cause. The FDOT Driveway Guide states:

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**9.4**

**DRIVEWAY  
SEPARATION AND THE  
AASHTO GREEN BOOK**

Benefits of Driveway  
Separation

According to the latest research reported in the *AASHTO Green Book (2001)*, (page 734, Exhibit 9-101), if the operating speed is 45 mph or above, a separation of 300 feet between access points, gives acceptable urban operation. On the average, traffic using driveways with 300 foot separations usually result in an interference with 15% or less of the through traffic.

Rule 14-97, F.A.C., State Highway System Access Control Classification System And Access Management Standards, also states that a non-restrictive median (*“Non-Restrictive Median” means a median or painted centerline which does not provide a physical barrier between center traffic turning lanes or traffic lanes traveling in opposite directions. This includes highways with continuous center turn lanes and undivided highways.*) has a connection spacing standard of 245 feet for roads with a posted speed of 45 MPH or less.

IN COMPLIANCE

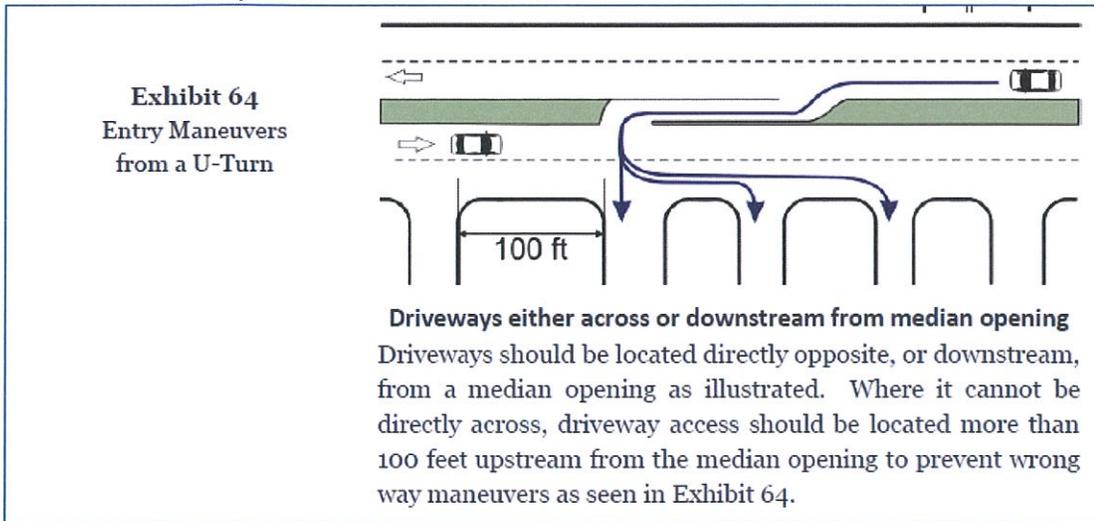
(2) *Failure to grant the variance would result in exceptional hardship to the applicant:*

The applicant states, “If the variance is not approved, we could either (a) move the existing southern entrance further south or (b) close the southern entrance and move the northern entrance further south. a. If the southern entrance is moved south it will no longer align with the existing median and present a safety hazard to a potential guest who attempts to make a U-turn and maneuver across US 1 to the development. b. Closing one of the entrances for this property would drastically impact circulation, truck access and fire service to the site (which is significantly large, 3.31 acres). Also, you would have the same U-turn movements north near Kay Dr. conflicting with travelers heading southbound.”

LDC Section 101-1 defines “exceptional hardship” as “a burden on a property owner that substantially differs in kind or magnitude from the burden imposed on other similarly situated property owners in the same land use district as a result of adoption of these regulations.”

The current nonconforming access driveways have existed since the original development of the property in the early 1970s for the former hardware store and lumber yard. The applicant is proposing to relocate the existing northern driveway and bring both driveways further into compliance with the LDC’s access standards. Although some nonconformities would be improved through the change, full compliance with the current LDC’s access standards would not be achieved based on the submitted plans. Failure to grant the variance could result in an inadequate driveway configuration that may hamper vehicular circulation for not only customers, but also emergency vehicles, delivery trucks and garbage trucks.

1 The FDOT Driveway Guide states:



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4 If the variance is not granted, the applicant could combine the two nonconforming  
5 driveways into a single driveway that complies with the 400-foot separation requirement,  
6 pursuant to LDC Sections 114-195 and 114-199. The applicant could also relocate both  
7 driveways to comply with the 400-foot separation requirement from each other and all  
8 other streets. However, these options have their own drawbacks that would affect the on-  
9 site circulation of vehicles (including delivery trucks and emergency vehicles) and may  
10 worsen access management along U.S. 1.

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12 Another alternative would be for the applicant to wait for the new Land Development  
13 Code to become effective. The new LDC was adopted by the BOCC on April 13, 2016,  
14 but is not yet effective. The new LDC amended Section 114-195 to allow a deviation to  
15 the 400-foot driveway spacing standard where the posted speed limit is 45 MPH or less.  
16 Pursuant to the new LDC Section 114-195, "Proposed developments with access on U.S.  
17 1 that are designated as Class 5 or Class 6 access control classifications, as defined by  
18 FDOT, where the posted speed limit is 45 MPH or less may deviate from 400-foot  
19 standard, in accordance with the standards contained in Chapter 14-97, F.A.C., State  
20 Highway System Access Control Classification System and Access Management  
21 Standards." The new provision cannot be taken advantage of until the new LDC becomes  
22 effective. Staff is current waiting for an appeal of an unrelated section of the new LDC to  
23 be resolved, so an exact effective date is not known at this time.

24  
25 IN COMPLIANCE

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27 (3) *Granting the variance will not result in increased public expenses, create a threat to*  
28 *public health and safety, create a public nuisance, or cause fraud or victimization of the*  
29 *public:*

30  
31 The applicant states, "There is no increase in public expense or a threat to health or safety  
32 with the approval of this variance. It's our opinion it will increase safety for the reasons  
33 outlined in Question 2."

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2 Staff does not anticipate that granting the requested variance would result in increased  
3 public expenses, create a threat to public health and safety, create a public nuisance, or  
4 cause fraud or victimization of the public. The proposed development would bring the  
5 existing access driveways into compliance with current FDOT standards and include a  
6 southbound right-turn deceleration lane for the northern driveway. Granting the requested  
7 variance would allow an improved two-driveway configuration given the existing and  
8 proposed development on the property and the location of the U.S. 1 median opening  
9 between northbound and southbound lanes. The proposed access driveways would also  
10 help improve vehicular circulation on the property, including access by emergency  
11 vehicles.

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13 IN COMPLIANCE

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15 (4) *The property has unique or peculiar circumstances, which apply to this property, but*  
16 *which do not apply to other properties in the same zoning district:*

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18 The applicant states, “Our project is seeking to drastically redevelop this property;  
19 however, the Dollar Tree store must remain in its present condition. Based on the  
20 configuration of that store and the median opening location on US 1 the variances  
21 requested are unavoidable.”

22  
23 The property is developed with existing structures and paving, and its triangular shape is  
24 uncommon in the SC District. In the County, properties are typically rectangular in shape.  
25 The design of the proposed access driveways has taken into consideration the existing  
26 configuration of U.S. 1 and the proximity of nearby streets. The proposed redevelopment  
27 of the property would improve vehicular circulation and bring nearly all aspects of the  
28 property into full compliance with the current LDC.

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30 IN COMPLIANCE

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32 (5) *Granting the variance will not give the applicant any special privilege denied other*  
33 *properties in the immediate neighborhood in terms of the provisions of this chapter or*  
34 *established development patterns:*

35  
36 The applicant states, “Granting this variance will not provide us any special privileges.  
37 The driveway spacing will eventually meet County Code once the appeal is complete. In  
38 addition, the site meets the primary governing requirements when related to traffic and  
39 safety, which is outlined by FDOT.”

40  
41 There are no other similarly situated properties in the immediate neighborhood. The  
42 established development pattern on the property, the proposed development, the current  
43 U.S. 1 configuration and the proximity of nearby streets all make it difficult to maintain  
44 the two existing driveways in a way that fully complies with the current LDC. The  
45 overall proposed redevelopment of the property would eliminate the nonconforming

1 parking spaces in the setback and right-of-way, and bring nearly all aspects of the  
2 property into full compliance with the LDC.

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4 IN COMPLIANCE

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6 (6) *Granting the variance is not based on disabilities, handicaps or health of the applicant or*  
7 *members of his family:*

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9 The applicant states, "Granting of the requested variance is not based on the health or  
10 physical condition of the applicant or their family."

11  
12 Concerning the proposed development, granting the requested variance would not be  
13 based on disabilities, handicaps or health of the applicant or their family members.

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15 IN COMPLIANCE

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17 (7) *Granting the variance is not based on the domestic difficulties of the applicant or his*  
18 *family:*

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20 The applicant states, "Granting of the requested variance is not based on any domestic  
21 difficulties faced by the applicant or their family."

22  
23 Concerning the proposed development, granting the requested variance would not be  
24 based on the domestic difficulties of the applicant or their family.

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26 IN COMPLIANCE

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28 (8) *The variance is the minimum necessary to provide relief to the applicant:*

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30 The applicant states, "Granting of the requested variance will provide adequate  
31 circulation throughout the site for delivery trucks, garbage trucks, and emergency  
32 vehicles and is the minimum necessary will allow for the safest and most efficient use of  
33 the land and will provide the applicant/landowner with the desired layout that best serves  
34 its clientele. As mentioned above, the applicant has made every effort to bring the  
35 existing driveway into compliance with FDOT by relocating the access and providing a  
36 deceleration lane."

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38 The variance is the minimum necessary to provide for the proposed access driveways.

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40 IN COMPLIANCE

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42 V RECOMMENDATION:

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44 Staff recommends **APPROVAL** of the requested variance to the access standards in LDC  
45 Chapter 114, Article VII, resulting in two curb cuts to U.S. 1 that are spaced 248 feet from

1 each other and the northern curb cut spaced 350 feet from Kay Drive, with the following  
2 conditions:

- 3
- 4 1. This variance approval is based on the site plan by Christopher Patrick Collins, P.E., of  
5 CPH, dated 7/28/2016, submitted with the Variance Application. Work not specified or  
6 deviations to the approved plans shall not be carried out without any required additional  
7 Planning & Environmental Resources Department approval.  
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  - 9 2. This variance approval does not waive or reduce any other requirement of the Land  
10 Development Code, nor waive the Land Development Code requirements for any future  
11 development.  
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13 VI PLANS REVIEWED:

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- 15 A. Site Plan by Christopher Patrick Collins, P.E., of CPH, dated 7/28/2016.
  - 16 B. Boundary & Topographic Survey by Thomas J. Galloway, Professional Surveyor and  
17 Mapper, of CPH, signed and sealed 12/15/2016.