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**Shopper's Haven Redevelopment
3301-3573 N. Federal Hwy.**

Variance Justification Narrative re Parking Lot Curbing and Screening of Rooftop Equipment

W4C, LLC & NH-13, LLC (collectively referred to herein as "Petitioner") are the owners of the +/- 22.1-acre parcel located at 3301-3573 N. Federal Highway, which is generally located at the southwest corner of Sample Road and North Federal Highway ("Property") in the City of Pompano Beach ("City"). The Property is designated Commercial on the City's Future Land Use Map and is zoned B-3, General Business. The Property is currently developed with a dated, +/- 200,376 square foot commercial plaza which includes a shuttered grocery store, a Bed Bath & Beyond, Youfit, Party City, Bealls, and a variety of other retail spaces ("Shopper's Haven").

Recognizing the need to reinvest in and improve the shopping center, in 2022, Petitioner obtained minor site plan approval and major building design approval to replace the anchor grocer tenant with a new, popular grocery store and make a variety of upgrades and renovations to the overall appearance and site design of the Property. The site plan development order included a condition of approval to add continuous curbing between the parking rows to meet the Code requirements of Section 155.5102.C.9 of the City Code. This section of the City Code requires each off-street parking space to include a continuous curb at a maximum of five and a half inches (5.5") in height with a vehicular overhang no more than two and a half feet (2.5') in width or six foot (6') long wheel stops may be provided in lieu of a continuous curb when required for compliance with accessibility guidelines under the Americans with Disabilities Act (ADA). In addition, the Code calls for all rooftop-mounted mechanical equipment to be screened by parapet walls or other screening which is at least as tall as the equipment on the roof.

Petitioner is in the process of seeking building permits to start the renovations and new construction in the shopping center and has been unable to satisfactorily address the parking lot curbing issue or the rooftop screening issue. With regard to the parking lot curbing, Petitioner is trying to redo an existing parking lot configuration that is constrained by existing retail spaces and mature trees which Petitioner is trying to maintain. In addition, the curbing requirement presents tripping hazards for customers of the shopping center and loss of parking spaces.

With regard to the rooftop screening, the new grocer has several pieces of equipment that must go on the roof. The vast majority of the equipment is screened by either an aluminum screening box or a +/- 7 foot tall parapet wall. However, in order to provide screening equal in height to three of the AC units, the parapet wall would need to be raised to almost 14 feet. This would create structural issues for the building and would be very difficult to maintain during storms or other high wind events. It is important to note, none of the rooftop equipment will be visible at all from the street or ground level adjacent to the buildings.

Accordingly, Petitioner is respectfully requesting two variances. First, Petitioner is requesting variance approval for the entirety of the shopping center parking lot to not provide continuous curbing

between the parking rows. Second, Applicant is requesting a variance from the requirements of Section 155.5301(a)(i) to not provide rooftop screening equal in height to all of the mechanical equipment.

In accordance with Section 155.2420 of the City Code, Petitioner will demonstrate compliance with the following criteria to obtain variance approval:

- a) **There are extraordinary and exceptional conditions (such as topographic conditions, narrowness, shallowness, or the shape of the parcel of land) pertaining to the particular land or structure for which the Variance is sought, that do not generally apply to other lands or structures in the vicinity;**

Curbing Request

There are extraordinary conditions applicable to the Property that do not generally apply to other lands within the surrounding area. The Project entails making site improvements to an existing shopping center. As such, Petitioner must work within the restraints of the existing parking lot landscaping design. Adding the required continuous curbing at 5.5" between each parking row will cause the parking spaces to shift and will require reducing the terminal landscape islands at the end of each parking row. This reduction in the terminal landscape islands will in turn require the removal of the existing trees within the terminal islands, which will no longer be large enough to sustain the large trees. As the City staff has requested that these large trees remain in place, Petitioner is requesting a variance from this Code requirement due to the restraints of the existing parking lot and landscaping design and layout and the safety concerns for pedestrians visiting the Property.

Additionally, the City adopted the Transportation Corridor Studies Transformation Plan ("Studies") on February 11, 2014, which created extraordinary and exceptional conditions. The Studies identify the Federal Hwy. corridor as the City's Destination Drive. This corridor is seen as the area where people live, shop & play. This Project is aligned with the vision of the Federal Hwy. corridor in that it provides retail uses along the corridor. Furthermore, the Project is consistent with the Studies, which contemplates improvements of existing shopping centers along Federal Hwy. The proposed national grocer tenant creates additional pedestrian traffic that will be utilizing the parking lot. The City's Code requires the use of curbing and wheel stops for retail uses that already generate significant pedestrian traffic in addition to the pedestrian traffic contemplated by the Studies. Curbing between the parking rows creates dangerous hazards that are unsuitable for pedestrians, especially for seniors and the disabled. Curbing and wheel stops have earned a reputation and history of pedestrian injuries from tripping and other safety considerations. Safety concerns make it important to eliminate curbs and wheel stops in areas where pedestrians are likely to be present.

Mechanical Equipment Request

There are extraordinary conditions applicable to the Property that do not generally apply to other lands within the surrounding area. As shown in the South Elevation Sections Plan Exhibit included with the submittal, there are three areas of rooftop mechanical equipment that do not have a parapet wall or screening that is equal to the height of the mechanical equipment; these are labeled as AC/1, AC/3 and AC/6. The mechanical equipment in area in AC/1 is 5'-7" above the

parapet wall and the equipment in areas AC/3 and AC/6 are 1' and 1'-3" above the parapet wall. The parapet wall is 7'-6" in height. To increase the parapet wall to a height that will be equal to the height of area AC/1 would require increasing the height of the parapet wall to a height of 13'-1". Increasing the height of the wall to this level, or adding a screening device that will cover the equipment will be structurally unsound on a large roof such as this and would be difficult to affix to the roof securely enough to withstand hurricane force winds. As such, the unique conditions of the existing building necessitate the need for the variance request. Moreover, the fact that Petitioner is constructing a new grocery store structure in between existing stores that are nonconforming make the conditions extraordinary.

- b) The extraordinary and exceptional conditions referred to in paragraph a., above, are not the result of the actions of the landowner;**

Curbing Request

The extraordinary and exceptional conditions are not the result of the actions of the landowner. Petitioner is working within the restraints of the existing development and seeks to avoid a hazardous condition and create a safe environment for customers and residents. Significant safety concerns make it important to eliminate curbing in areas where pedestrians are likely to travel. Cars, shadows, poor contrast and nightfall all add to the tripping hazard created by continuous curbing. Further, they often act as a launching pad for vehicles when drivers mistakenly hit the gas instead of the break, sending vehicles into the air and into pedestrian areas. As such, the hardship is not the result of the actions of the landowner; rather, it is the result the City's Plan and the desired safety precaution intended to protect patrons of the proposed Project.

Mechanical Equipment Request

The extraordinary and exceptional conditions are not the result of the actions of the landowner. Petitioner is working to improve the shopping center by renovating the facades of the buildings to remain but is building a new grocery store building in between them. These are extraordinary and constraining conditions. The shopping center is old and in need of repair and reinvestment and complying with the screening requirements will substantially frustrate their ability to complete the upgrades.

- c) Because of the extraordinary and exceptional conditions referred to in paragraph a., above, the application of this Code to the land or structure for which the Variance is sought would effectively prohibit or unreasonably restrict the utilization of the land or structure and result in unnecessary and undue hardship;**

Curbing Request

Strict application of the City's Code would unreasonably restrict the utilization of the land or structures and result in unnecessary and undue hardship. This variance request stems from significant concerns for the safety of customers visiting the Property. Wheel stops and curbing create more liability claims in the U.S. for slips, trips and falls in parking lots than any other issue and account for up to 73% of claims¹. According to the American Society for Testing Materials (ASTM) Standards, adjoining walkway surfaces shall be made flush and fair whenever possible for

¹ New *ASTM F1637 Standard for Safe Walking Surfaces* (2002, reissued in 2009) recommends against wheel stops and curbs

new and existing facilities to the extent practicable² and parking lots should be designed to avoid the use of continuous curbing & wheel stops³. The Journal of the American Society of Safety Engineers identifies best practices for such parking areas and states any obstruction to safe pedestrian travel, such as wheel stops, curbs or speed bumps, must be highlighted, but it must be understood that by merely coloring the hazard, the defect remains, even though it may be yellow⁴. As with any safety hazard, it is best to eliminate it. Petitioner seeks to create the safest environment for residents and customers visiting the Project by providing a parking lot with no curbing between the parking rows. As the requirements specified in Code Section 155.5102.C.9 result in a hazardous condition, strict application of this Code requirement would unreasonably restrict the utilization of the land or structures and result in unnecessary and undue hardship.

Mechanical Equipment Request

Strict application of the City's Code would unreasonably restrict the utilization of the land or structures and result in unnecessary and undue hardship. Providing a 14 foot tall parapet wall would make the rooftop area unsafe, particularly during storm events. In addition, the equipment on the roof that will not be fully screened will not be visible to anyone, which is the purpose of rooftop screening requirements. This means the requirement here is completely unnecessary and creating an undue hardship.

- d) The Variance would not confer any special privilege on the landowner that is denied to other lands or structures that are similarly situated;**

Curbing Request

The requested Variance would not confer any special privilege on the landowner that is denied to other lands or structures that are similarly situated. The intent of the requested Variance is not to confer any special privilege, but to further the City's Code's purpose, which is to provide orderly efficient and safe conditions for pedestrians and vehicles in the parking lot. Many other parking lots in the City only have striping and do not have curbing or wheel stops.

Mechanical Equipment Request

The requested Variance would not confer any special privilege on the landowner that is denied to other lands or structures that are similarly situated. The intent of the requested Variance is not to confer any special privilege or not screen the equipment. As stated, none of the equipment is visible from the street, meaning it is effectively screened from view. Rather, the variance is to facilitate development of the building without unsafe structural conditions.

- e) The extent of the Variance is the minimum necessary to allow a reasonable use of the land or structure;**

Curbing Request

The requested Variance is the minimum necessary to allow a reasonable use of the land or structure. As stated above, Petitioner is working within the restraints of the existing parking lot

² ASTM, F1637-13, 5.2.1

³ ASTM, F1637-13, 9.1

⁴ Dodge, David A. "Best Practices, Mercantile Safety". *Journal of the American Society of Safety Engineers* (February 2015).

design. Adding the continuous curbing would create unsafe conditions for pedestrians and would require the loss of existing mature trees. As such, the variance request is the minimum necessary to allow reasonable use of the land for Petitioner in regard to customer safety.

Mechanical Equipment Request

The requested Variance is the minimum necessary to allow a reasonable use of the land or structure. As stated, the parapet walls have been raised to screen most of the equipment and much of the other equipment is in screening boxes. Increasing the parapet wall height or adding a screening device would create an unsafe condition during a hurricane or tropical storm. As such, the variance request is the minimum necessary to allow reasonable use of the land for Petitioner.

- f) The Variance is in harmony with the general purpose and intent of this Code and preserves its spirit;**

Curbing Request

The general purpose and intent of Code Section 155.5102 is to ensure the provision of off-street parking and loading facilities while allowing the flexibility needed to accommodate alternative solutions. The standards are also intended to achieve City policies of supporting development and redevelopment of transit-oriented development and commercial corridors, accommodating appropriate infill development, and encouraging pedestrian-oriented development. The Project provides adequate off-street parking and loading facilities. The Project is aligned with the City's policy to support redevelopment of the Property's commercial corridor and infill area. The Project encourages pedestrian-oriented development by providing sidewalks along E. Sample Rd. and N. Federal Hwy. connecting to existing adjacent developments. Therefore, the requested Variance is in harmony with the general purpose and intent of this Code Section 155.5102 and preserves its spirit by encouraging the creation of safe pedestrian environments for a Project located on a major commercial corridor.

Mechanical Equipment Request

The general purpose and intent of Code Section 155.5301(a)(i) is to block rooftop mechanical equipment from view of the general public. The Project meets this intent by providing a parapet wall and screening equipment on one area of the rooftop. As demonstrated in the Site Line Study Exhibit included with this submittal, the mechanical equipment will not be visible from the roadway or at ground level. As such, the Project is meeting the intent of the Code.

- g) The Variance would not adversely affect the health or safety of persons residing or working in the neighborhood, be injurious to property or improvements in the neighborhood, or otherwise be detrimental to the public welfare; and**

Curbing Request

Granting the Variance will not adversely affect the health or safety of persons residing or working in the neighborhood, be injurious to property or improvements in the neighborhood, or otherwise be detrimental to the public welfare. Providing the continuous curbing will cause a dangerous hazard for neighborhood workers and residents who visit the Property. Petitioner seeks to create

the safest environment for residents and customers visiting the Property by maintaining the parking lot with the current design, which reduces the risk of tripping for pedestrians.

Mechanical Equipment Request

Granting the Variance will not adversely affect the health or safety of persons residing or working in the neighborhood, be injurious to property or improvements in the neighborhood, or otherwise be detrimental to the public welfare. Increasing the height of the parapet wall or providing a screening device that is affixed to the roof would cause an unsafe condition due to the hurricane force winds that often impact the state of Florida. Petitioner seeks to create the safest environment for residents and property owners by not increasing the parapet height or adding a screening device.

h) The Variance is consistent with the comprehensive plan.

Curbing & Mechanical Equipment Request

The Variances are consistent Section 3.02(B) of the City's Comprehensive Plan, which includes retail uses as a permitted use in the Commercial Land Use Designation. Additionally, the request is consistent with Objection 01.04.00 as it supports and promotes the intermix of residential and commercial uses along a major traffic corridor. While this property does not contain any residential uses, it provides commercial retail services to the surrounding neighborhoods and residential uses, including a multi-family residential project that will be developed just south of the Property at 3151 N. Federal Hwy. Lastly, the Comprehensive Plan generally encourages development and reinvestment in shopping centers in the City. These variances will help support these larger goals.