

March 3, 2021

VIA EMAIL: wwaters@lakeworthbeachfl.gov

William Waters
Director of Community Sustainability
City of Lake Worth Beach
1900 2nd Avenue North
Lake Worth Beach, FL 33461

Re: PZB #20-00500003 (7-Eleven)

Dear Mr. Waters:

This letter contains the evidentiary basis supporting the appeal of affected party, Mr. Francisco Gil, Manager of 1920 10th Avenue, LLC (Appellant or Gil) of the Planning and Zoning Board's (Board) approval of a Major Site Plan of a 4,730 square foot 7-Eleven convenience store, including a 234 square foot dine in/take out Laredo Taco fast food store, and gas station with 14 fueling positions (the Project). The appeal is being timely filed pursuant to § 23.2-17 b) of the City of Lake Worth Beach Code of Ordinances (Code). The Project is located at the northwest corner of 10th Avenue North and Barnett Drive. The Project was approved at the Board's hearing of January 27, 2021, with the written decision being rendered on February 2, 2021.

The Appellant owns the building that is west of the Project, and two warehouses of 45,000 square feet on Barnett Drive. The congestion and additional traffic from the Project adversely impacts the Appellant, other neighboring property owners, and two other affected parties, Fred Schmidt and Dan Hiatt who own the two buildings immediately north of the Project and Barnett Drive, at 1847 and 1848 Aragon Avenue.

The Major Site Plan for the Project approved by the Board is contingent upon an eight foot variance. Neither the Board's verbal approval, nor its Order approving the Major Site Plan refer to or approved a variance as part of the Project. At the January 27, 2021 hearing, neither the City staff nor 7-Eleven offered any evidence to justify the variance. Nor did they incorporate any documentation from the July 15, 2020 hearing of the Board regarding the variance. Therefore, as a matter of law, the Board's approval of the Major Site Plan, which is dependent upon the variance, is void because

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there was no competent substantial evidence presented to the Board to demonstrate that 7-Eleven met the variance criteria in the Code. Moreover, the Board could *not* rely upon its prior approval of the variance because the Board's previous approval is on appeal before the Palm Beach County Circuit Court. The Board's approval of the variance may be reversed, in which case the Major Site Plan approved by the Board will not be in compliance with the City's Land Development Regulations (LDRs). Therefore the Board's approval of 7-Eleven's Major Site Plan was not validly approved.

The Expert Testimony of the Appellant's Planner and Traffic Engineer Is Competent Substantial Evidence That Warrants a Reversal of the Board's Approval of the Project

In this appeal, the Commission must consider the testimony of the witnesses and other record evidence such as the Traffic Study and Site Plan and determine whether, as the Fourth District Court of Appeal has stated¹, there is **any** substantial competent evidence upon which this Commission could rely to reverse the Board's approval of the Project. The answer to that question is, YES, the Commission can base its decision on the expert testimony and exhibits incorporated into the PowerPoint presentation on behalf of the Appellant and other neighboring corporate owners of properties (also affected parties) impacted by the Project.

1. The Project is not Consistent with Policies of the City's Comprehensive Plan

Pursuant to § 163.3194(1)(a), Fla. Stat., the Project cannot be approved unless it is consistent with all of the policies of the City's Comprehensive Plan (the Plan). The Florida Supreme Court has confirmed the rule of law expressed in this statute. See *Brevard County v. Snyder*, 627 So. 2d 469 (Fla. 1993). This rule of law is so strong that if a Development Order is approved that is not consistent with the City's Comprehensive Plan, and the Project were to be constructed and an affected party is successful in its challenge of the approval, a court may order the building or project constructed to be demolished. See *Pinecrest Lakes, Inc. v. Shidel*, 795 So. 2d 191 (Fla. 4th DCA 2001).

The Project is located in the Mixed-Use West (MU-W) Future Land Use category. City's staff and 7-Eleven relied heavily upon Policy 1.1.1.6 of the Future Land Use Element (FLUE), which implements the MU-W land use category for the notion that the Project is consistent with the Plan. The testimony of Dr. William Whiteford was competent evidence that the Project does not comply with this Policy. Dr. Whiteford is a land planner certified by the American Institute of Certified Planners (AICP), is a consultant to developers and cities, and the former Director of the Palm Beach County Zoning Division. Dr. Whiteford has a PhD in Design, Construction and Planning from the University of Florida and is the former chair of the North Palm Beach Planning Commission.

¹ *City of Ft. Lauderdale v. Multidyne Medical Waste Management, Inc.*, 567 So. 2d 955 (Fla. 4th DCA 1990).

Policy 1.1.1.6 states: “The Mixed-Use West [land use] category is intended to provide for a mixture of residential, office, service and commercial retail uses with specific areas west of I-95.” Further, the Policy states that the preferred mix of uses area-wide is 75% residential and 25% non-residential.

Dr. Whiteford testified that the intent of this policy is to promote projects with a mix of two or more *distinct uses*. Dr. Whiteford testified that the Project was not consistent with this policy because it does not further objectives in the Plan by promoting the mixture of two or more distinct uses into the area. He explained that the Project contributes 100% *commercial retail* uses to the area, i.e. gas station, convenience store, and fast food restaurant. Further, that while these uses may be different in what they sell, they do not function as a distinct mix of uses because each use is a retail convenience use.

Additionally, because of the Project’s location just west of I-95 and the nature of each use is to offer retail convenience to the public to and from I-95 via 10th Avenue North, the Project is appropriately categorized as a regional highway-serving use. Dr. Whiteford added that multiple variations of the same type of use, as is the case with the Project’s three regional highway retail uses, is not “mixed use,” which as envisioned by Policy 1.1.1.6 means a combination of distinctly different uses such as residential, commercial retail, office, and personal services uses serving the area west of I-95 along 10th Avenue North. As a result, Dr. Whiteford concluded that the Project does not further the policy’s intent of providing a mix of uses for the surrounding area.

Dr. Whiteford also testified that the Project was not consistent with Policy 2.1.4.7 of the Plan’s Transportation Element. This policy encourages the development of mixed uses to reduce the need for vehicular trips. As described in FLUE Policy 1.1.1.6, mixed use, pursuant to the City’s vision, contemplates a mixture of residential, commercial retail, office and personal uses, or some combination of these uses. A 4,730 square foot convenience store with a 14 fueling position gas station and a fast food restaurant does not constitute a mixture of uses which can work together to reduce traffic. Indeed, given their regional highway nature this mixture of three retail uses is directly contrary to the goal of reduce vehicular trips in the area west of I-95. On the contrary, these uses will draw traffic from the highway and dump them into an area that is already severely congested. (See attached article from the *Palm Beach Post*). For these reasons, Dr. Whiteford concluded that the Project was not consistent with Policy 2.1.4.7.

Dr. Whiteford also testified that the Project was also not consistent with Policy 2.1.4.3 of the Transportation Element. This policy states “Heavy traffic generating land uses (as defined in the City’s LDRs) ***shall be carefully considered*** before permitting [them] along Tenth Avenue North immediately west of I-95.” He explained that “heavy traffic land uses” include vehicular uses that offer convenience goods and services such as gas stations with convenience stores and fast food

establishment with take out and/or drive through. Dr. Whiteford testified that the proposed 7-Eleven uses were defined as “heavy traffic generating uses” according to the City’s LDRs. (See Table 23.3-6 of the City Code). He explained that heavy traffic generating uses are typically located at major intersections, but that the intersection of Barnett Drive and 10th Avenue North was not a major intersection in the City. Moreover, he noted that Barnett Drive provided direct access to Lake Worth Middle School. A careful comparison by the Board of the heavy traffic generating highway uses proposed by 7-Eleven’s Project with Policy 2.1.4.3 leads to the inescapable conclusion that the Project is not consistent with this policy of the Plan.

2. **The Project’s Added Traffic Will Make the Already Congested and Dangerous Roads of This Area of the City Worse.**

Mr. Masoud Atefi, an expert in Traffic Management/Engineering and Transportation Planning with 35 years of experience in analyzing traffic impacts from development projects testified for the Appellant. From 2000-2015, he was the Administrator of Palm Beach County’s Traffic Engineering Division. As such he was ultimately responsible for signing off on the County’s review of all development traffic reports and whether a development project in the County met the County’s Transportation Performance Standards Ordinance.

Mr. Atefi evaluated the Traffic Impact Report (Traffic Report) submitted by 7-Eleven’s transportation consultant. Data and tables generated by Mr. Atefi and his analysis of traffic generated by the Project and the increased adverse impacts which will result is incorporated herein and attached hereto as **Exhibit “A.”** Mr. Atefi testified that based on the Traffic Report, the intersection of 10th Avenue North and Barnett Drive will fail Palm Beach County’s Level of Service (LOS) standards. He testified that this intersection as a whole is expected to fail as well as the northern portion of Barnett Drive. Mr. Atefi testified that those individuals who must use this intersection for egress onto 10th Avenue North can expect long delays (458 seconds or approximately 7 ½ minutes) before they can exit the intersection. Mr. Atefi testified that this is an extraordinarily period of time, and well above even a normal “long” delay. Mr. Atefi’s testimony confirmed the testimony provided by the affected parties, Gil, Schmidt and Hiatt during the Board’s first hearing on the Project. Specifically, it confirmed the congestion in this area and the long delays they experienced when entering and exiting their properties all of which rely upon the intersection of Barnett Drive and 10th Avenue North.

Mr. Atefi shared with the Board the most recent (2018-2021) accident data for the area of Barnett Drive and 10th Avenue North. He noted that there had been 69 traffic accidents at or within 1,000 feet of this intersection. He noted that this was an average of 23 accidents per year. Given this data, Mr. Atefi suggested this intersection was a dangerous area and not likely to become any less dangerous with the addition of the Project, even with the improvements 7-Eleven had suggested.

Mr. Atefi testified that children being transported by vehicles to and from Lake Worth Middle School had to go through this area during the peak hours for vehicles in both the morning and afternoon.

Mr. Atefi also testified based on the Traffic Report that the new driveway proposed by 7-Eleven on 10th Avenue North would be generating 30 vehicles an hour turning left out of the 7-Eleven driveway against significant through traffic traveling east and west on 10th Avenue at relatively high rates of speed. He testified that this would create an unsafe situation and be dangerous for those exiting the 7-Eleven as it was an “unprotected turn.” Mr. Atefi explained that the congestion at the intersection of Barnett Drive and 10th Avenue North would be such that vehicles attempting to turn east bound onto 10th Avenue North would back up approximately 580 feet and more than 150 feet past the 7-Eleven driveway. He concluded that this would create significant traffic circulation issues for traffic both entering and exiting the 7-Eleven site.

3. The Project Does Not Meet Section 23.3-18 of the City’s Zoning Code.

Dr. Whiteford also testified that the Project does not meet the intent of the Mixed Use-West Zoning District (MU-W). The MU-W district is intended to provide for the establishment and expansion of a broad range of office and commercial uses, including moderate intensity and higher intensity commercial, hotel/motel and Medium density residential development along the City’s western thoroughfares. He testified that this zoning district is intended to implement the uses described in Policy 1.1.1.6 of the Plan as discussed above. He testified that the three retail uses proposed are clearly regional highway uses and as such are not consistent with the MU-West District.

Dr. Whiteford also testified that the Project does not meet the Conditional Use criteria of the City’s Code, in particular to ensure that the use “will not create excessive problems for through traffic or have a negative impact on nearby residential areas or **the commercial viability of ... neighbors.**” He noted that there was ample evidence that the neighboring commercial properties and Lake Worth Middle School would be negatively impacted by the addition of the Project. Dr. Whiteford referred to the testimony of the owners of these neighboring corporate citizens and the expert testimony provided by Mr. Atefi. Dr. Whiteford concluded that the Project was not consistent with Policy 1.1.1.6 and that it would not implement the MU-W as is intended by the City’s Plan. He therefore opined that the Board should not approve the Project.

CONCLUSION

The expert testimony of Dr. William Whiteford and Mr. Masoud Atefi provide ample competent substantial evidence to support a reversal of the Board’s decision to approve 7-Eleven’s application for a Major Site Plan. The testimony of Dr. Whiteford demonstrated that the Project is not consistent with policies of the City’s Comprehensive Plan and does not meet the intent of the MU-W Zoning

District, which was intended to implement the MU-W future land use category and Policy 1.1.1.6.

Dr. Whiteford also testified that the Project does not meet the conditional use criteria of the City's Code. Moreover, because the Major Site Plan is dependent upon a variance, and there was no evidence whatsoever offered at the Board's January 27, 2021 hearing demonstrating that the Project met the variance criteria in the City's Code, the Major Site Plan does not meet the City's LDRs. Even if the Board could have been entitled to rely upon its previous approval of the variance at its July 15, 2020 meeting, that approval is on appeal and the variance, at this point is not valid.

The Board and the City Commission are obligated to follow § 163.3194(1)(a), Fla. Stat. and the Florida Supreme Court's decisions. This statute and the Florida Supreme Court follow the rule of law that a development project must be consistent with all of a City's Comprehensive Plan in order to be approved. Because the Project is not consistent with three policies of the City's Comprehensive Plan, or the intent of the MU-W Zoning District and does not meet the conditional use criteria of the City's Code, the City Commission is required to *reverse the decision of the Board and deny the Project*.

Very truly yours,

JONES FOSTER P.A.



Thomas J. Baird
Florida Bar Board Certified City, County and Local Government Attorney
TJB:MRG
cc: Client

Intersection Analysis – 10th Ave N./Barnett Dr. – PM Peak Hour

SHORT REPORT

General Information		Site Information		
Analyst	LSB	Intersection	10th Avenue NB/Barnett Drive	
Agency or Co.	Lisa S. Barnstein PE	Area Type	All other areas	
Date Performed	04/20/20	Jurisdiction	PSG	
Time Period	PM Peak Hour	Analysis Year	Future With Project	
Volume and Timing Input				
	EB	WB	NB	SB
Number of Lanes	LT 2 RT 2	LT 2 RT 2	LT 1 RT 1	LT 1 RT 1
Lane Group	L TR	L TR	L TR	L TR
Volume (veh)	51 1233 151 298	55 186 14 462	176 25 56	
% Heavy Vehicles	2 2 2 2	2 2 2 2	2 2 2 2	
Prft	0.95 0.95 0.95 0.95	0.95 0.95 0.95 0.95	0.95 0.95 0.95 0.95	
Pretimed/actuated (P/A)	A P P P	A P P P	A A A A	A A
Startup Loss Time	2.0 2.0	2.0 2.0	2.0 2.0	2.0 2.0
Extension of Effective Green	2.0 2.0	2.0 2.0	2.0 2.0	2.0 2.0
Arrival Type	3 9	3 3	3 3	3 3
Lane Extension	3.0 3.0	3.0 3.0	3.0 3.0	3.0 3.0
Feedforward Volume	0 0	0 0	0 0	0 0
Lane Width	12.0 12.0	12.0 12.0	12.0 12.0	12.0 12.0
Parking/Gravel/Parking	N 0	N 0	N 0	N 0
Parking/Gravel/Parking	N 0	N 0	N 0	N 0
Bus Stop/Bus Hour	0 0	0 0	0 0	0 0
Minimum Recession Time	3.2 3.2	3.2 3.2	3.2 3.2	3.2 3.2
Phasing	EW Only	EW Perm	DA	NS Perm
Timing	G = 17.5 Y = 0	G = 6.0 Y = 6.5	G = 73.5 Y =	G = 43.0 Y =
Duration of Analysis (min) = 0.25				
Cycle Length (s) = 160.0				
Lane Group Capacity, Control Delay, and LOS Determination				
	EB	WB	NB	SB
Adjusted Flow Rate	54 1446	314 1005	108 429	185 85
Lane Group Capacity	240 1604	307 1889	351 420	83 448
v/c Ratio	0.22 0.90	1.02 2.05	0.56 0.99	2.23 0.19
Green Ratio	0.57 0.46	0.85 0.54	0.27 0.27	0.27 0.27
Uniform Delay d ₁	28.9 39.9	56.7 95.0	50.4 98.3	58.5 45.1
Delay Factor k	0.17 0.50	0.50 0.50	0.16 0.49	0.50 0.17
Incremental Delay d ₂	0.5 6.6	57.3 11.9	2.1 41.6	588.9 0.2
PF Factor	1.000 1.000	1.000 1.000	1.000 1.000	1.000 1.000
Control Delay	28.4 48.5	114.0 46.9	52.5 98.9	648.4 45.3
Lane Group LOS	C D	F D	D F	F D
Approach Delay	47.8	56.9	84.9	458.5
Approach LOS	D	E	F	F
Intersection Delay	81.8			

Barnett Drive

SB	
185	85
83	449
2.23	0.19
0.27	0.27
58.5	45.1
0.50	0.17
588.9	0.2
1 000	1 000
648.4	45.3
F	D
458.5	
F	
Overall Intersection	

Barnett Drive
Overall Intersection

Exhibit "A"



Palm Beach County Intersection Crash Analysis

10th Ave N./Barnett Dr. - 3 Years Data (1/1/2018 to 1/12/2021)

Crash Analysis Query: 10 Av & Barnett Dr - 3 Yr
 69 crash events matched the analysis criteria.
 69 of 69 crash events successfully geo-located.

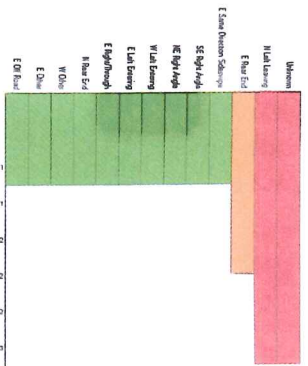
▼ ANALYSIS CRITERIA

Crash Date: between 01/01/2018 and 01/12/2021
 Offset Distance: 1000
 Geographic Extent: Intersection of 10th Ave N and Barnett Dr

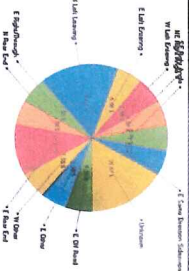
▼ VISUALIZATION MAP

Launch visualization map to view results geographically.

▼ CRASH TYPES BAR CHART



▼ CRASH TYPES PIE CHART



▼ INTERSECTION DIAGRAM



Crash Analysis Query: 10 Av & Barnett Dr - 3 Yr

69 crash events matched the analysis criteria.
 69 of 69 crash events successfully geo-located.

▼ ANALYSIS CRITERIA

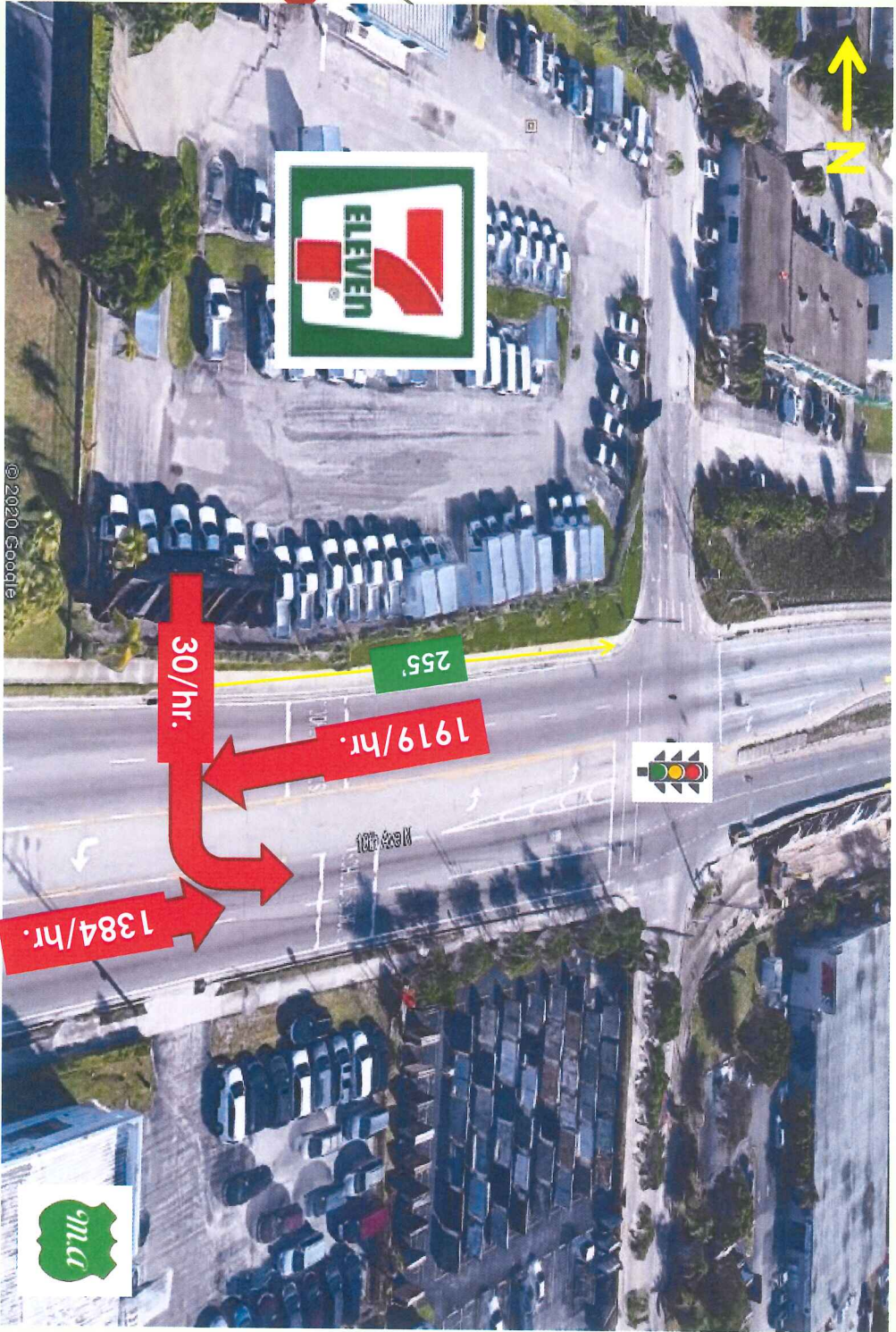
Crash Date: between 01/01/2018 and 01/12/2021
 Offset Distance: 1000
 Geographic Extent: Intersection of 10th Ave N and Barnett Dr

▼ VISUALIZATION MAP

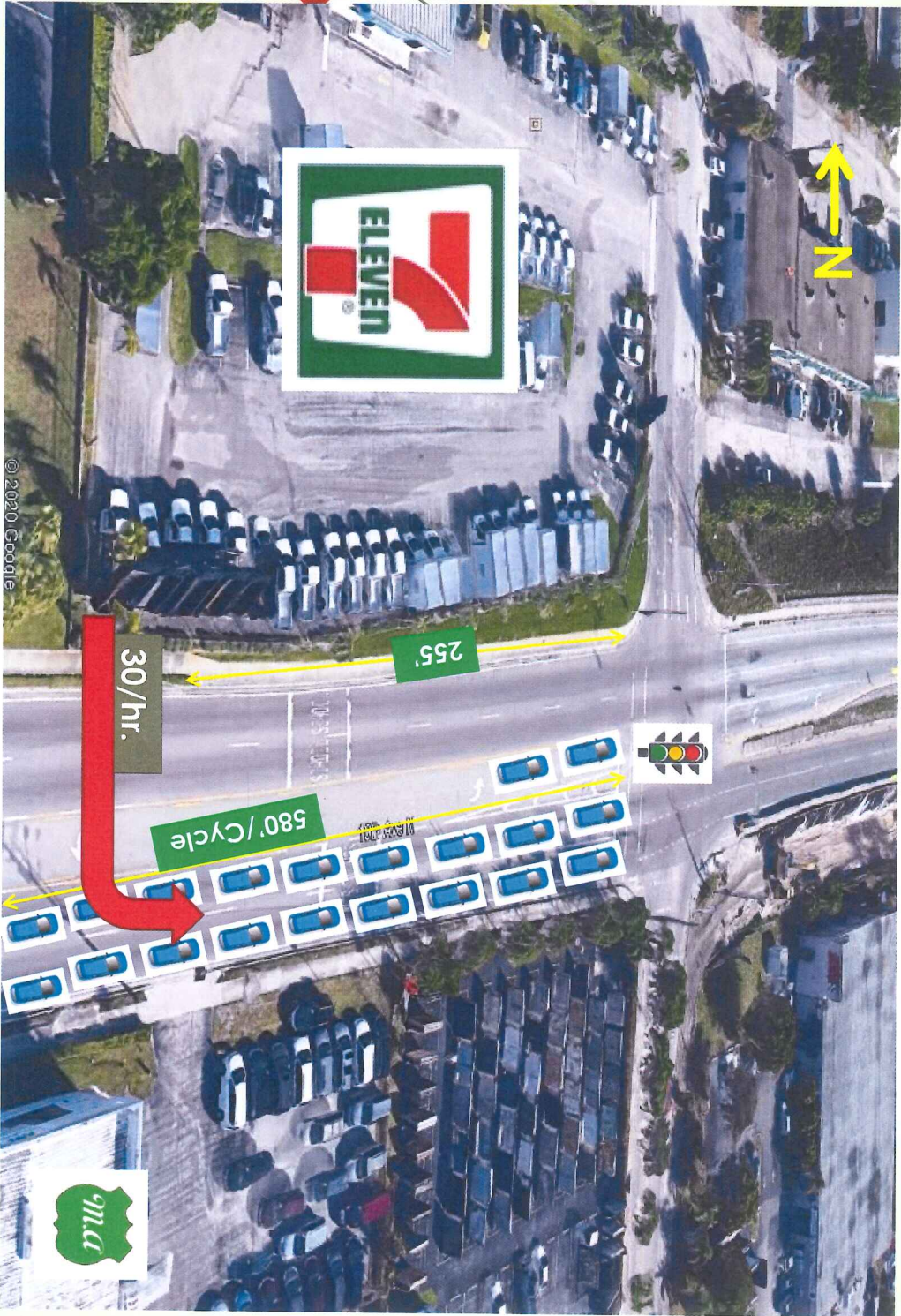
Launch visualization map to view results geographically.



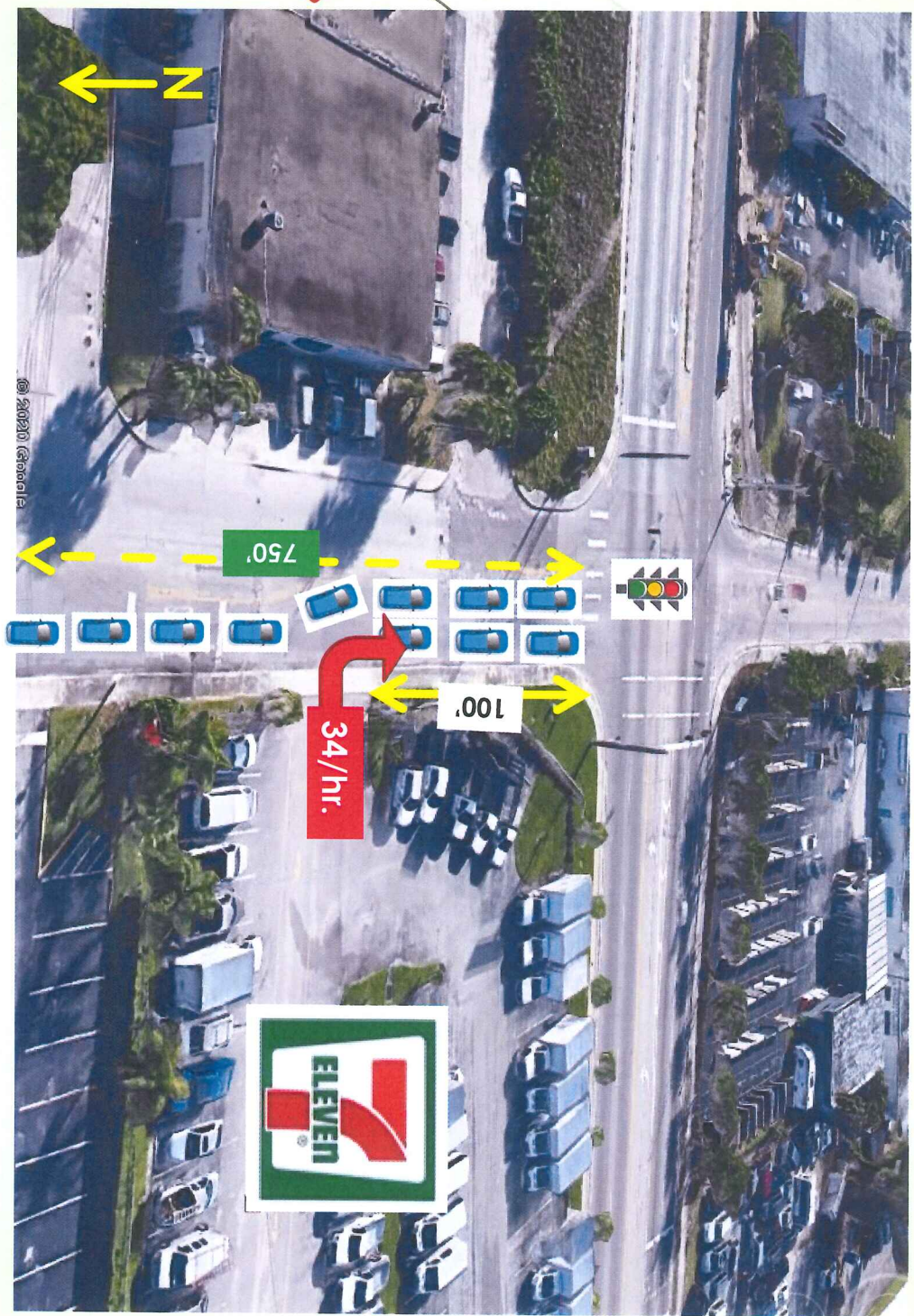
Traffic Conflicts – 10th Ave N. Driveway – PM Peak Hour



EB Queue – 10th Ave N.



SB Queue – Barnett Drive – PM Peak Hour



Required Intersection Improvement

