

# EXECUTIVE BRIEF SPECIAL MEETING

**AGENDA DATE:** May 20, 2021

**DEPARTMENT:** Community Sustainability

**TITLE:**

Appeal by Thomas J. Baird, Esq. on behalf of 1920 10th Avenue, LLC and by Alfred Malefatto on behalf of Daniel Hiatt and Frederick Schmidt, of PZB Project # 20-00500003, which included site plan and conditional use approvals to allow for the construction of a new vehicle fueling/charging station, single-destination retail, and restaurant at 1900 10th Avenue North (7-Eleven)

**SUMMARY:**

Thomas J. Baird, Esq. on behalf of 1920 10th Avenue, LLC and Alfred Malefatto on behalf of Daniel Hiatt and Frederick Schmidt are appealing a final order of the Planning and Zoning Board (PZB) to allow a 7-Eleven at 1900 10th Avenue North. The subject project was initially approved with conditions at the July 15, 2020 Planning and Zoning Board meeting for a major site plan, vehicle fueling/charging station, single-destination retail, and restaurant conditional uses, and a variance. Mr. Baird has filed a writ of certiorari with the 15th Judicial Circuit, appealing the variance determination separately. Upon appeal to the City Commission on December 15, 2020, the project was remanded back to the PZB, which approved the application upon rehearing at its January 27, 2021 meeting.

**BACKGROUND AND JUSTIFICATION:**

The subject property is a 54,331 square feet vacant lot located at the northwest corner of 10th Avenue North and Barnett Drive. The lot previously operated as a vehicle rental lot for Wayne Akers Ford for at least the past 20 years. The applicant, Anne-Christine Carrie of KEITH (a land development consulting firm), submitted an application on behalf of 1900 10th Ave, LLC to develop the subject site with a 7-Eleven vehicle fueling station with retail and restaurant uses. The application included the following:

Major Site Plan for the development of a 4,730 square foot retail and restaurant building and 3,520 square foot canopy structure;

Conditional Use Permit to establish Vehicle Fueling/Charging Station, Single-Destination Retail, and Restaurant Uses; and a

Variance of 8 feet from the maximum building setback line to allow for a front setback of 40 feet from 10th Avenue North.

At the July 15, 2020 Planning and Zoning Board meeting, staff presented a summary of the attached staff report, which contained the review of the plans, documentation and materials provided by the applicant for consistency with the applicable guidelines and standards found in the City of Lake Worth Beach's Land Development Regulations (LDRs), Major Thoroughfare Design Guidelines (Guidelines), Comprehensive Plan and Strategic Plan. The PZB approved the project with a vote of 4-2 with staff conditions recommended in the staff report and presentation, and added a condition directing the applicant to work with staff, Palm Beach County Engineering and Palm Beach County School System for additional school signage. Following the approval, 1920 10th Avenue, LLC appealed the decision granting the development order to the City Commission. Contemporaneously, it also filed a writ of certiorari with the 15th Judicial Circuit, appealing the variance determination, which is still outstanding.

The City Commission heard the appeal, excluding the variance, on December 15, 2020 and voted (3-0) to remand the application back to the PZB for additional discussion. The PZB reheard the application on January 27, 2021 and voted (5-2) to approve the application with conditions. The final order was issued on February 2, 2021. The application was appealed again by Thomas J. Baird, Esq. on behalf of 1920 10th Avenue, LLC and a new appeal was filed by Alfred Malefatto on behalf of Daniel Hiatt and Frederick Schmidt.

### **QUASI-JUDICIAL PROCESS:**

Section 23.2-17(b) of the City's code outlines the process for appealing decisions of the planning and zoning board and historic resources preservation board to the City Commission. It requires the appealing party to submit a basis of appeal which the appealing party has done (it is attached). At the hearing, each party will be given 10 minutes to present its argument. Thereafter, the commission members may make comments, ask questions, and discuss the information presented at the PZB meeting. The Commission's decision upholding or overturning the decision should be based on competent, substantial evidence.

The courts have defined substantial evidence as that which will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. It is such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. Competent means that the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. See e.g., Village of Palmetto Bay v. Palmer Trinity Private School, Inc. 128 So. 3d 19 (Fla. 3d DCA 2012).

### **POTENTIAL MOTIONS:**

I find that the evidence presented in the application materials, presentations, testimony and the staff report was competent and substantial, and therefore move to uphold the decision of the Planning and Zoning Board approving a major site plan and vehicle fueling/charging station, single-destination retail, and restaurant uses at 1900 10<sup>th</sup> Avenue North with conditions of approval as set forth in the development order.

I find that the evidence presented was not competent and substantial [based upon specified reasons], and therefore, move to overturn and reverse the decision of the Planning and Zoning Board approving a major site plan and vehicle fueling/charging station, single-destination retail, and restaurant uses at 1900 10<sup>th</sup> Avenue North as set forth in the development order.

### **ATTACHMENT(S):**

Appellant Basis of Appeal  
Transmittal Letter and Development Order (1/27/2021 Approval)  
January 27, 2021 PZB Meeting Minutes  
PZB Staff Report & Attachments A- D – January 27, 2021  
Staff's Presentation on January 27, 2021  
Applicant's Presentation on January 27, 2021  
Appellant's Presentation on January 27, 2021  
December 15, 2020 City Commission Meeting Minutes  
Transmittal Letter and Development Order (7/15/21 Approval)  
July 15, 2020 PZB Meeting Minutes  
Applicant's Presentation on July 15, 2021