

VA-24-04-008

Appeal of BZA Decision
On Billboard Variance

By: Joseph A. Kovescses, Jr., Esq.
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
June 18, 2024

2024-06-18 Public Hearing C6 Exhibit 1 - Joseph Kovescses

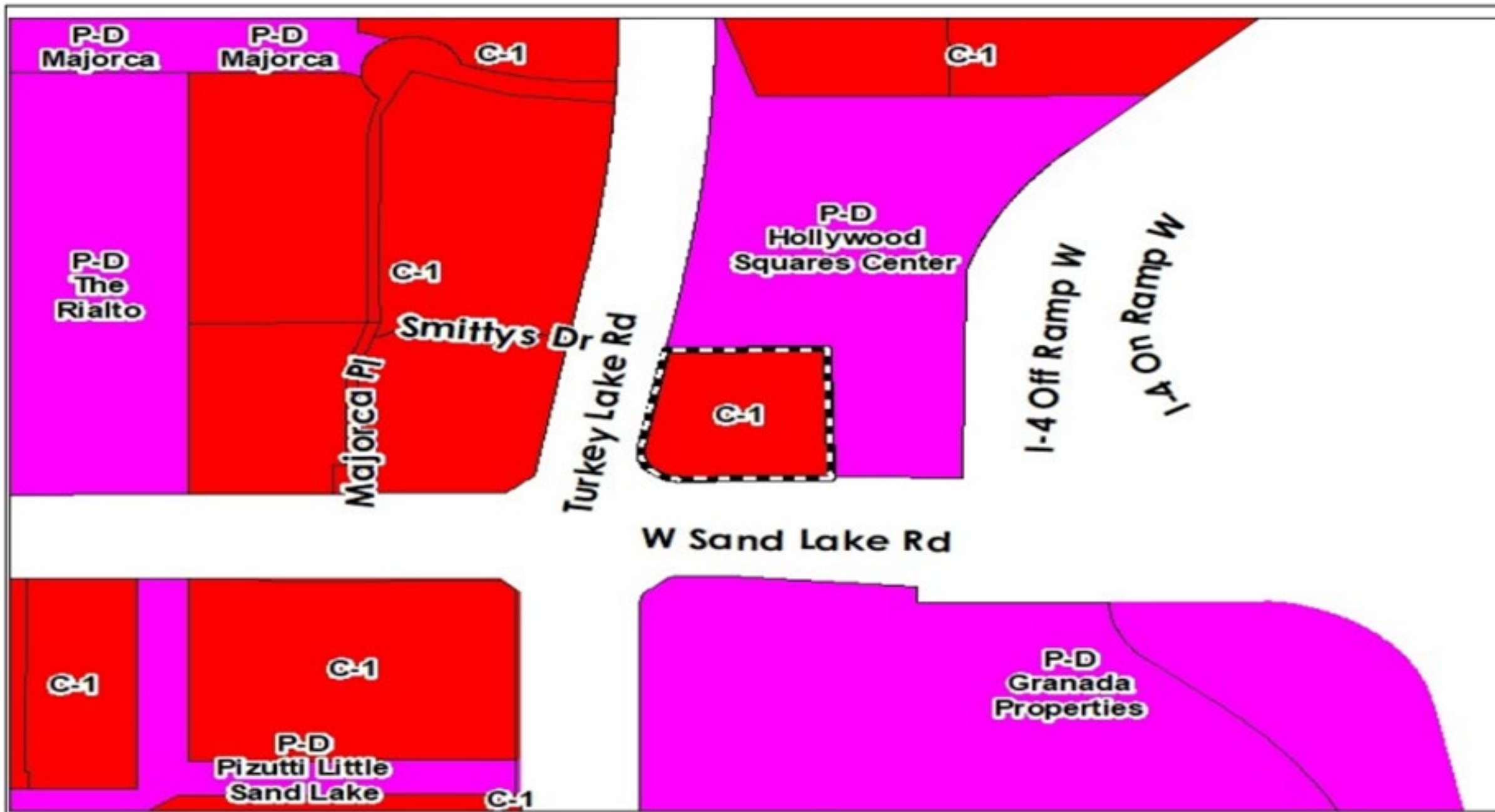


Property Information

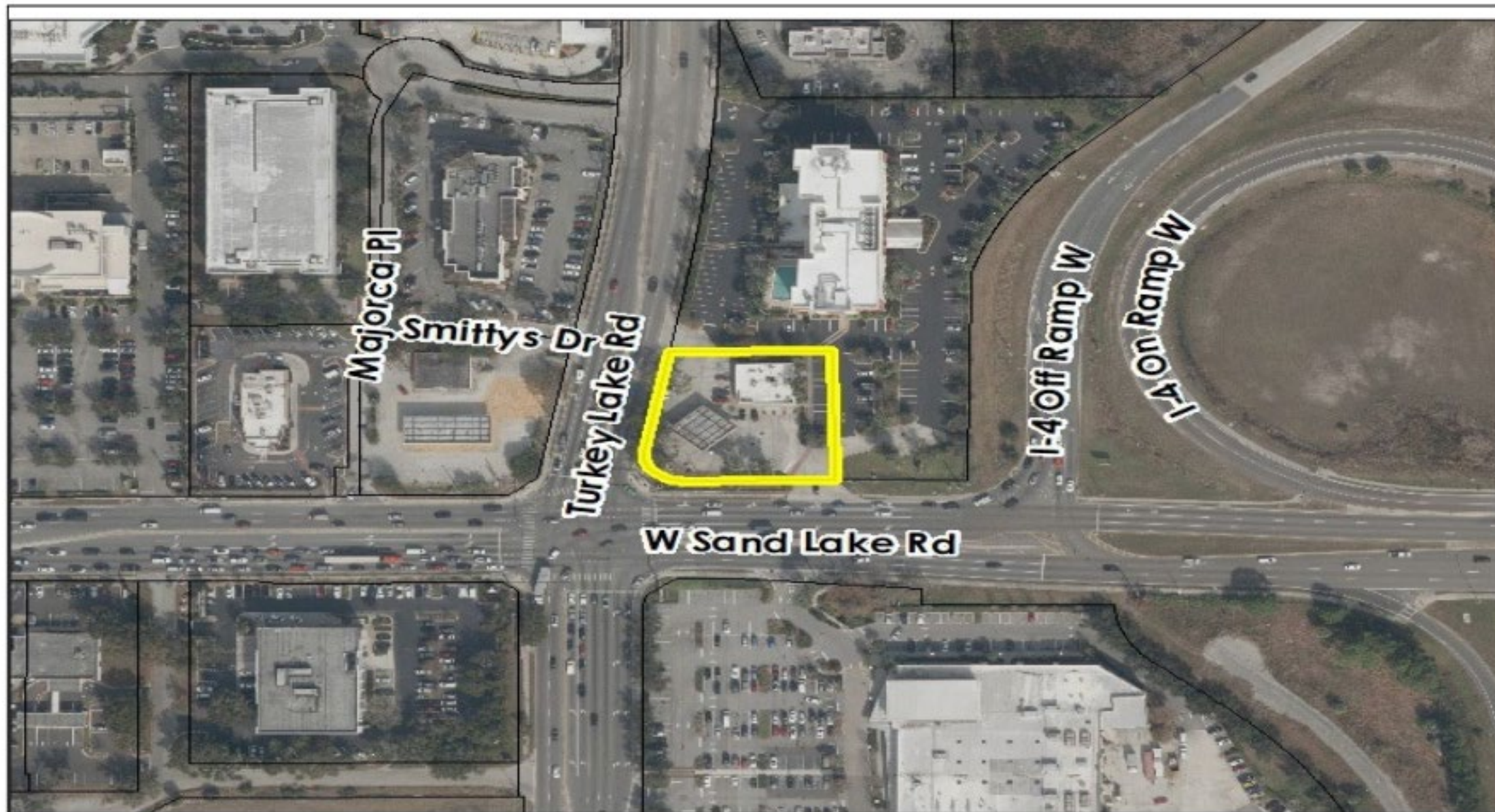
Property Information

- Owner: 7-Eleven Inc.
- Address: 7329 W. Sand Lake Rd.
- Location: Intersection of W. Sand Lake Rd. and Turkey Lake Rd.
- Zoning: C-1 (billboards permitted)

ZONING MAP



AERIAL MAP



SUBJECT SITE

Feet

0

400

800



Photographs

Picture 2.1: W. Sand Lake Rd Approaching Intersection with Turkey Lake Rd



Picture 2.2: Within Intersection Looking Down Turkey Lake Road



Picture 2.3: Within Intersection Looking Down Turkey Lake Road



Picture 3.1: Traveling down I-4 Off-Ramp



Picture 3.2: Traveling down I-4 Off-Ramp



Picture 3.3: Traveling down I-4 Off-Ramp



Picture 3.4: Traveling down I-4 Off-Ramp



**BILLBOARD
LOCATION
NOT VISIBLE
BEYOND TREES**



**BILLBOARD
LOCATION
NOT VISIBLE
BEYOND TREES**





Facing southwest toward subject property, from I-4 off ramp



Facing west toward subject property, from I-4 off ramp

**Approximate
Billboard location**



Facing north, down Turkey Lake Rd, looking at billboard location

**Approximate
Billboard location**



**Approximate
Billboard location**



Facing northeast, toward subject property

Ordinance (Sec. 31.5-126, Orange County Code)

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- Billboards are generally permitted within 50 feet of a limited access highway. *Sec. 31.5-126(n)(1), Orange County Code.*
 - “A billboard shall not be erected within fifty (50) feet of the nearest edge of the right-of-way of a limited access highway.”
- 500 ft set-back here arises adjacent to on and off ramps. *Sec. 31.5-126(m)(2), Orange County Code.*
 - “A billboard shall be set back at least five hundred (500) feet from the edge of the right-of-way, with the setback area commencing at the point that is five hundred (500) feet beyond one (1) end of a ramp of a limited access highway, continuing along the outside edge of the entire length of the ramp, and terminating at the point that is five hundred (500) feet beyond the end of the other ramp. The five hundred (500) foot linear distance from an end of a ramp shall be measured beginning at the gore point of the ramp.”

Ordinance (Sec. 31.5-126, Orange County Code)

- The stated purpose of billboard regulation, as indicated by Staff at Page 8 of the Staff Report, is from Sec. 31.5-126(n), which states:

(n) The control of billboards in areas adjacent to limited access highways, residential districts, agricultural districts and parks within the county is declared to be necessary

- to protect the public investment in limited access highways and parks;
- to attract visitors and residents to the county by preserving the natural beauty of the county near limited access highways, parks, residential districts and agricultural districts;
- to promote the recreational value of public travel along such limited access highways and of the use of parks;
- to assure that information in the specific interest of the traveling public is presented safely and aesthetically;
- to protect property values of residential districts;
- and to promote points of scenic, historic, cultural, and educational interest.

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- to attract visitors and residents to the county by preserving the natural beauty of the county near limited access highways, ~~parks, residential districts and agricultural districts~~;
- to promote the recreational value of public travel along such limited access highways ~~and of the use of parks~~;
- to assure that information in the specific interest of the traveling public is presented safely and aesthetically;
- ~~to protect property values of residential districts~~;
- ~~and to promote points of scenic, historic, cultural, and educational interest.~~

Picture 2.3: Within Intersection Looking Down Turkey Lake Road



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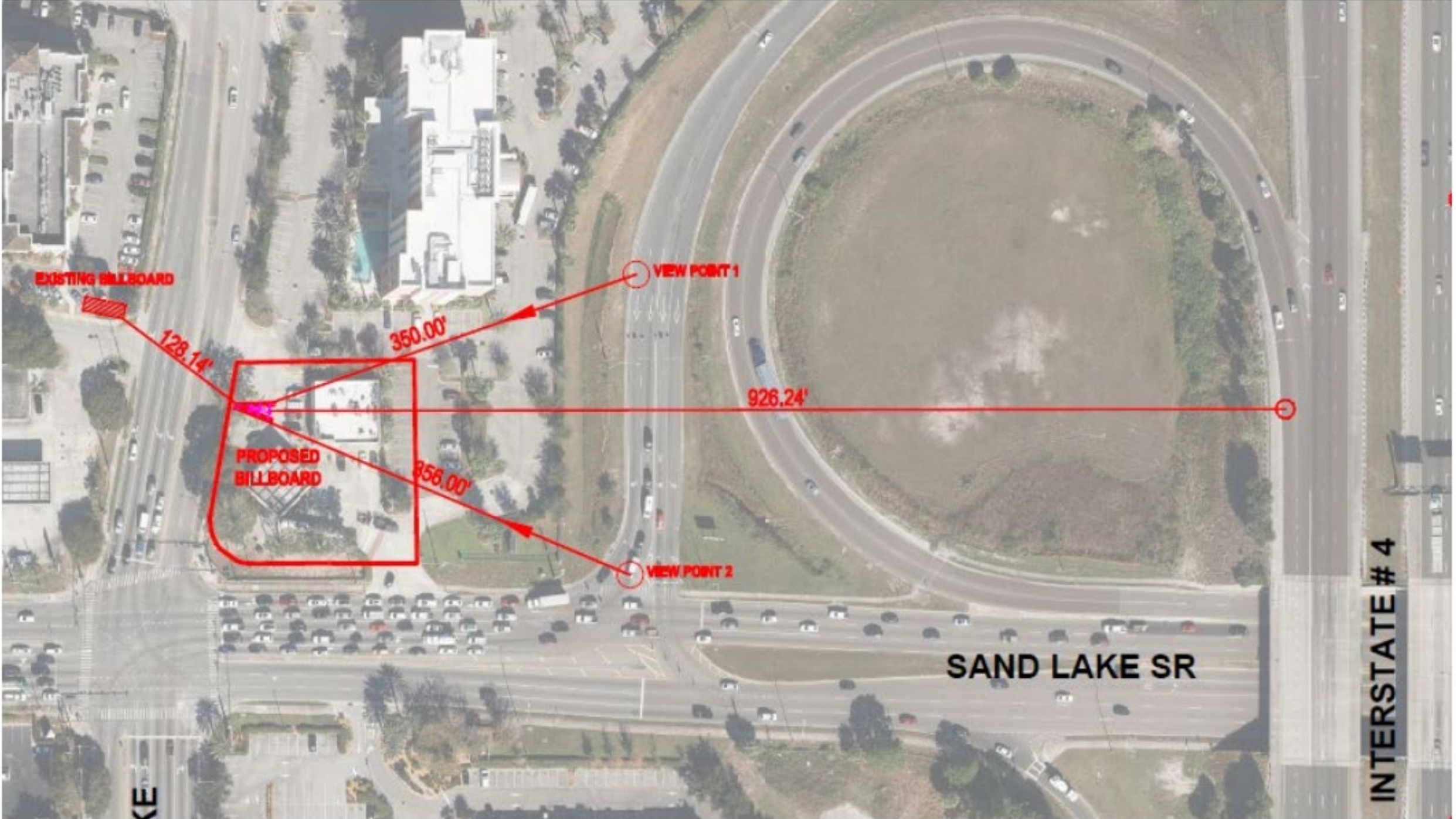
(n) The control of billboards in areas adjacent to limited access highways, residential districts, agricultural districts and parks within the county is declared to be necessary Accordingly:

(1) A billboard shall not be erected within fifty (50) feet of the nearest edge of the right-of-way of a limited access highway. **<-- 50 ft Enough to Satisfy Purpose**

Variance Request

Request

- Reduction of the 500 ft setback to 248 ft.
 - Still more than 50 ft general setback that satisfies purpose in Code.



EXISTING BILLBOARD

128.14'

PROPOSED
BILLBOARD

350.00'

356.00'

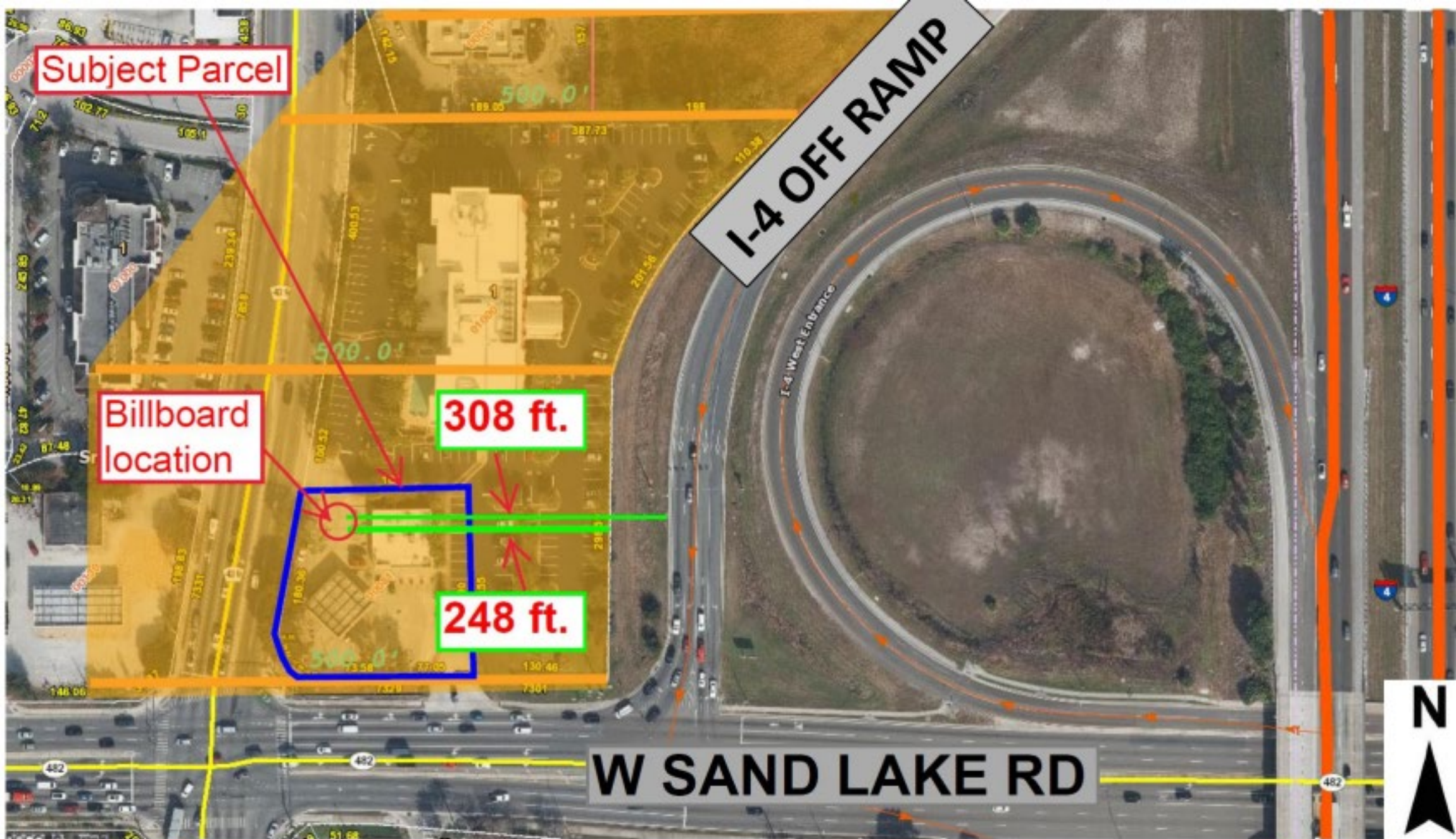
VIEW POINT 1

926.24'

VIEW POINT 2

SAND LAKE SR

INTERSTATE # 4



Subject Parcel

I-4 OFF RAMP

Billboard location

308 ft.

248 ft.

W SAND LAKE RD



= Area within the 500 ft. setback described in code

Staff Report

Staff Report

- Meet all other Code requirements, but variance request.

Development Standards for Billboards

	Code Requirement	Proposed
Max Height:	40 ft.	40 ft.
Minimum Clearance:	13.5 ft.	26 ft.
Maximum Copy Area (per sign face):	400 sq. ft.	378 sq. ft.

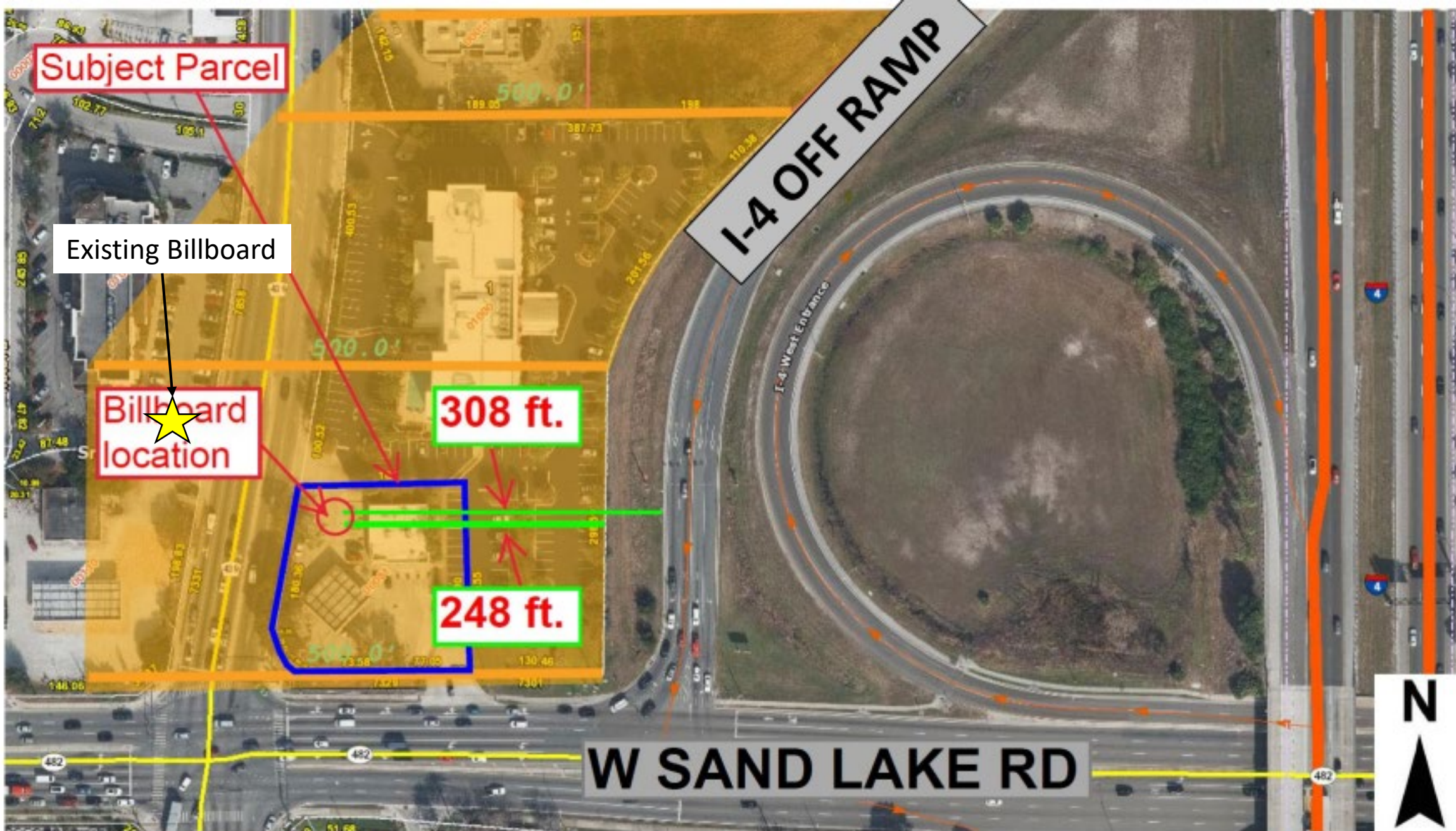
Setbacks (that apply to billboard in question)

	Code Requirement	Proposed
Front:	15 ft.	128 ft. (South)
Rear:	15 ft.	37.98 ft. (North)
Side:	5 ft.	118 ft. (East)
Side Street:	15 ft.	15 ft. (west)
Separation from billboard on same side of non-limited access highway	1,000 ft.	1,200 ft. (to North) No billboards are located on east side of Turkey Lake Rd. south of this property
Separation from park	200 ft.	1.84 miles (Tangelo Community Park to the Northeast)
Separation from agriculturally zoned property	100 ft.	3.97 miles
Separation from residential district	200 ft.	515 ft.
Separation from end of a limited access highway on/off ramp	500 ft.	248 ft. (variance request)

Variance Criteria

Special Conditions and Circumstances

- Larger than usual access ramp area associated with I-4, which pushes the setback area unusually close to and including portions of Turkey Lake Road.
- Proposed location is shielded from I-4 by hotel property.
- Already a Clear Channel billboard across the street within the setback area.
- Property is not subject to Tourist Commercial Signage Overlay.
- The proposed billboard does not target the access ramp.
- The proposed billboard will target the traffic along Turkey Lake Rd. and W. Sand Lake Rd.



Subject Parcel

Existing Billboard

Billboard location

308 ft.

248 ft.

I-4 OFF RAMP

W SAND LAKE RD



= Area within the 500 ft. setback described in code

Picture 2.3: Within Intersection Looking Down Turkey Lake Road



Not Self-Created

- Billboards are permitted uses in the Property's C-1 zoning district. (Staff Report, p. 2)
- The Property was developed with its current use of a 7-Eleven convenience store with gas pumps in 1989. (Staff Report, p. 2).
- The County's original sign ordinance was adopted in 1990. (Staff Report, p. 5).
- The Code language at issue here was adopted in 2015. (Staff Report, p. 5).
- The Property owner could have constructed a billboard without this setback issue when the Property was originally developed.
- It was County action that created the need for the variance.
- The application meets all other Code requirements. (Staff Report, p. 7).

No Special Privilege Conferred

- Not all other property owners within 500 feet setback areas are similarly situated.
- Not all other properties within the 500 feet setback areas are suitable for billboard development.
- Not all other properties within the 500 feet setback areas are located within heavily developed commercial districts.
- Not all other properties within the 500 feet setback areas are located ~1,000 feet from the main limited access highway roadway.
- Not all of the other properties within the setback area have been owned by the same owner since before institution of the County's billboard regulation in 1990.
- This is a very unique site at a major intersection in a developed commercial area.
- There is already another billboard within the setback area across the street from this proposed site.

Deprivation of Rights

- The proposed billboard would have been allowed at this site for this owner in 1989.
- Strict application of the Code deprives the Property owner of its rights that existed under the zoning Code when it acquired the Property.

Minimum Possible Variance

- We agree with staff that:
 - “The request is the minimum possible variance for this site, as the billboard is located on the property as far from the off ramp right-of-way as possible on the proposed site.”

Purpose and Intent

- The proposed billboard location is consistent with the stated purpose and intent of the billboard regulation as stated in Sec. 31.5-126(n).
- The sign face is not visible from vehicles using the access ramps and is not targeted at the access ramps or I4 itself.
- As indicated by the stated purposes in the Code, the billboard regulations are not intended to prevent advertising in what is already a major commercially developed zone with heavy traffic at the intersection of two major roadways.
- The surrounding properties are hotels, gas stations, retail shopping centers, and a whole foods - not the focus for protection under the regulations.

Conditions of Approval

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- We agree with the proposed Conditions of Approval in the Staff Report.

Basis for Appeal

1. Misapplication of § 479.106, *Florida Statutes*

- BZA incorrectly stated that Applicant would have wide latitude to cut down trees.
- FDOT approval required for any action under the statute.
- FDOT may require vegetation management plan which considers conservation and mitigation.

F.S. 479.106(1):

The removal, cutting, or trimming of trees or vegetation on public right-of-way to make visible or to ensure future visibility of the facing of a proposed sign or previously permitted sign shall be performed only with the written permission of the department in accordance with the provisions of this section.

2. Improper Slippery Slope Argument

- Allowing the variance would not allow all other adjacent owners to apply for a similar variance.
- Code Sec. 31.5-126(f) prohibits additional billboards within 1000 feet of an existing billboard on the same side of the road.
 - Billboards are prohibited within 1000 feet on each side of the site on either side of the road due to the existing billboard across the street.
 - Not all properties are similarly situated.

3. Meets Billboard Design Standards

- Reference to unpublished “policy” with respect to billboards
- BZA Staff acknowledged that the location and design met all code requirements, but for the 500 feet setback from the I-4 ramp

4. Erroneous Consideration of the Tourist Commercial Signage Overlay

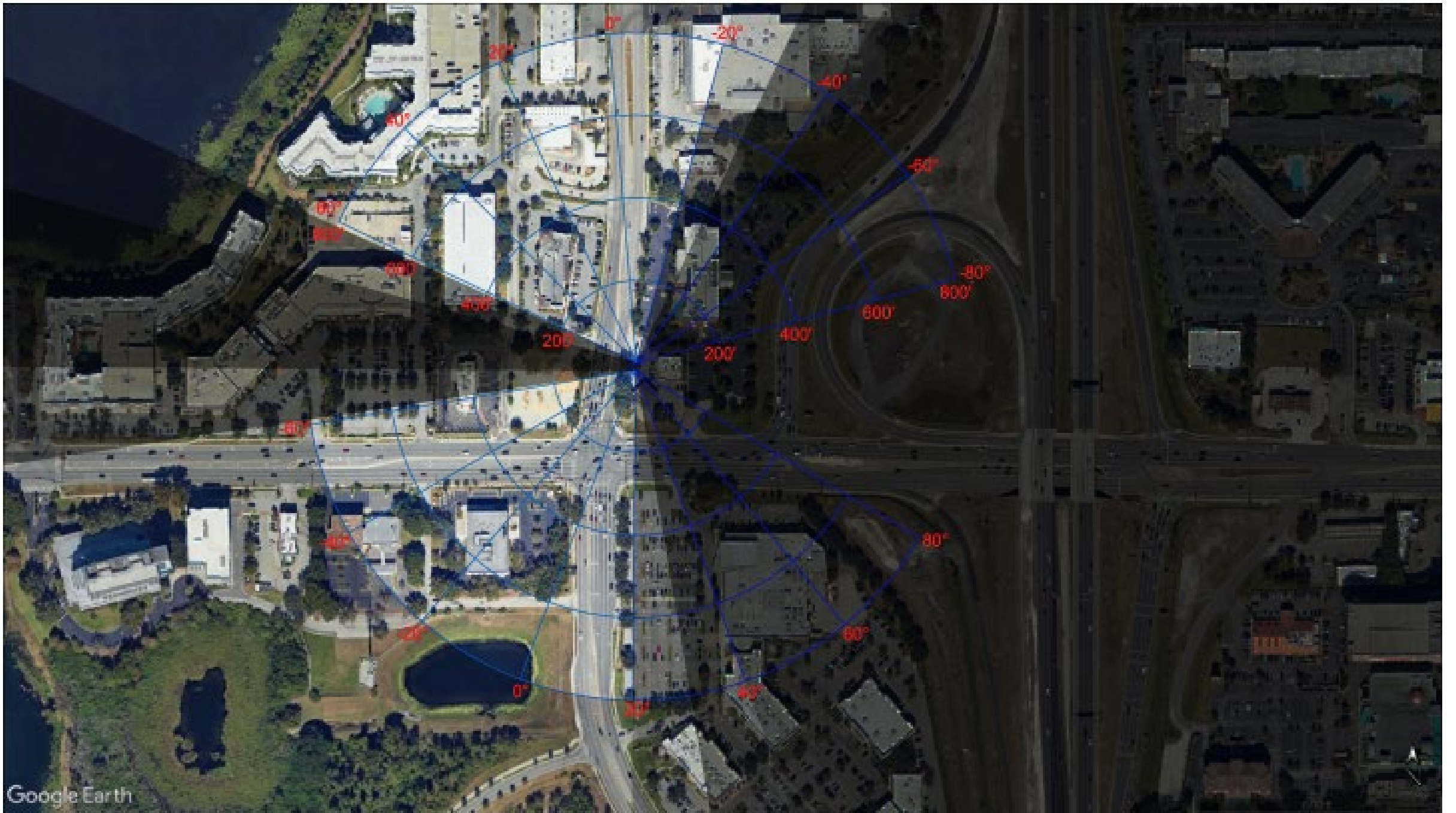
- The subject property is NOT within the Tourist Commercial Signage Overlay
- Staff Report contained reference to the TCS Overlay and the BZA discussed it as a basis for its decision to make assumptions about the County's intent with respect to the subject site.

5. Assumptions About Nearby Billboard

- BZA based its decision in part on unsupported assumptions about the non-conforming billboard across the street without evidence.

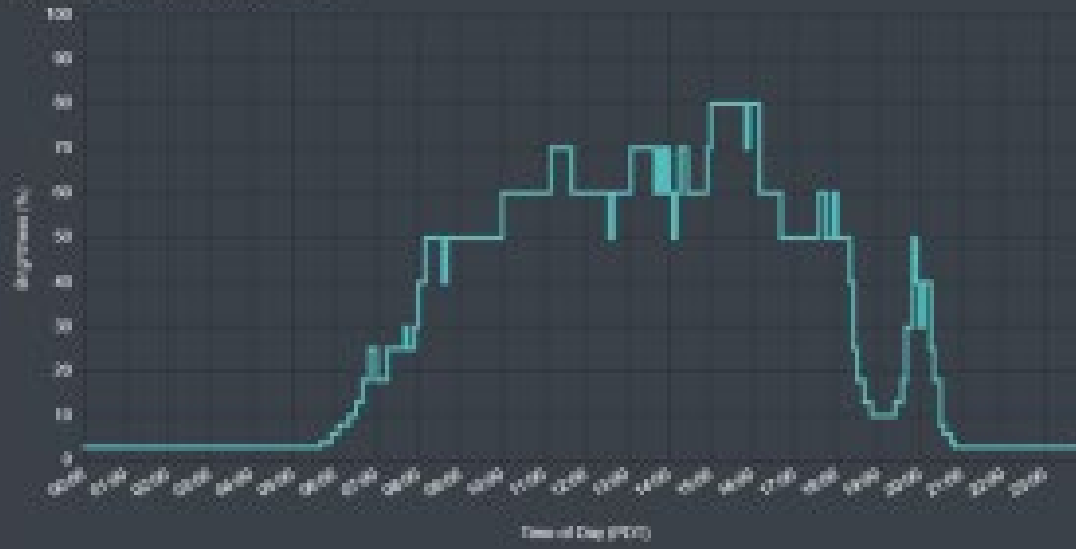
6. Assumptions About Lighting

- BZA based its decision in part on unsupported assumptions about the lighting from the digital billboard.
 - No evidence exists that lights from digital billboards would distract drivers.
 - Lights can be shielded and adjusted to minimize impact on traffic.
 - Lights can be blocked from facing up to comply with dark sky ordinances.
 - The existing billboard across the street is already operating as a digital billboard of materially similar style to the proposed billboard here.



Brightness History

Pattison Outdoor Panel-VI08004A_PC-8061 1010A-1018A Langford
BC Pattison Outdoor



05/24/2019

← May 2019 →

Sa	Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3	4
5	6	7	8	9	10	11	
12	13	14	15	16	17	18	
19	20	21	22	23	24	25	
26	27	28	29	30	31		

Close

Time of Day (PDT)

7. Applicant Presented Competent and Substantial Evidence

- Applicant presented competent and substantial evidence in support of its application that the BZA incorrectly characterized as assumptions it would not consider, all while considering assumptions from the BZA Staff.

Examples

MASKS ARE REQUIRED

#MaskUpPHX

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LukeDays2024.com



**LUKEDAYS
2024**

MARCH 23-24

The advertisement features a blue background with five fighter jets in formation on the left and a single jet on the right. The central logo includes a sunburst and stars, with the text 'LUKEDAYS 2024' and 'MARCH 23-24' below it. The website 'LukeDays2024.com' is displayed in the top right corner.

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NEW HIRES / LATERALS & PRE-SERVICE OFFICERS

HAWTHORNEPOLICE.COM



The advertisement is on a black background with white text. It includes two police badges: one for 'POLICE OFFICER HAWTHORNE POLICE 1928' and another for 'HAWTHORNE POLICE'. A QR code is located in the bottom right corner.

Closing

Closing

- Very uniquely situated property - *same circumstances would not apply to other properties.*
- Proposal meets all other Code provisions.
- Variance is appropriate for reasons stated herein.

**THANK
YOU**