




Interoffice Memorandum

DATE: April 23, 2024

TO: Jennifer Lara-Klimetz, Deputy Clerk
Board of County Commissioners

THROUGH: Agenda Development

FROM: Jennifer Moreau, AICP 
Manager, Zoning Division

CONTACT PERSON: **Ted Kozak, AICP**
Chief Planner, Zoning Division
(407) 836-5537 or Ted.Kozak@ocfl.net

SUBJECT: Request for Public Hearing to consider an appeal of the April 4, 2024 Board of Zoning Adjustment Recommendation for a Variance, VA-24-04-008, Joseph Kovecses For 7-Eleven, located at 7329 W. Sand Lake Road, Orlando, FL 32819, Parcel ID # 26-23-28-0000-00-081, District 6

APPLICANT/ APPELLANT: Joseph Kovecses For 7-Eleven

CASE INFORMATION: VA-24-04-008 – April 4, 2024

TYPE OF HEARING: Board of Zoning Adjustment Appeal

HEARING REQUIRED BY FL STATUTE OR CODE: Chapter 30, Orange County Code

ADVERTISING REQUIREMENTS: Publish once in a newspaper of general circulation in Orange County at least (15) fifteen days prior to public hearing.

ADVERTISING TIMEFRAMES: At least fifteen (15) days prior to the BCC public hearing date, publish an advertisement in the legal notice section of The Orlando Sentinel describing the particular request, the general location of the subject property, and the date, time, and place when the BCC public hearing will be held;

April 23, 2024

Request for Public Hearing – Joseph Kovacs For 7-Eleven

Variance Application

Page 2

ADVERTISING

Variance in the C-1 zoning district to allow a Billboard setback of 248 ft. in lieu of 500 ft. from the edge of right-of-way end ramp of a limited access highway.

**NOTIFICATION
REQUIREMENTS:**

At least 10 days before the BCC hearing date, send notices of the public hearing by U.S. mail to owners of property within 1,500 feet of the property.

**ESTIMATED TIME
REQUIRED:**

Two (2) minutes

**MUNICIPALITY OR
OTHER PUBLIC
AGENCY TO BE
NOTIFIED:**

N/A

**HEARING
CONTROVERSIAL:**

No

DISTRICT #:

6

The following materials will be submitted as backup for this public hearing request:

1. Names and known addresses of property owners within 1,500 feet of the property (via email from Fiscal and Operational Support Division); and
2. Location map (to be mailed to property owners).

SPECIAL INSTRUCTIONS TO CLERK:

1. Notify abutters of the public hearing at least two (2) weeks prior to the hearing and copy staff.
2. Public hearing should be scheduled within 45 days after the filing of the notice of appeal received on April 16, 2024, or as soon thereafter, as the BCC's calendar reasonably permits.

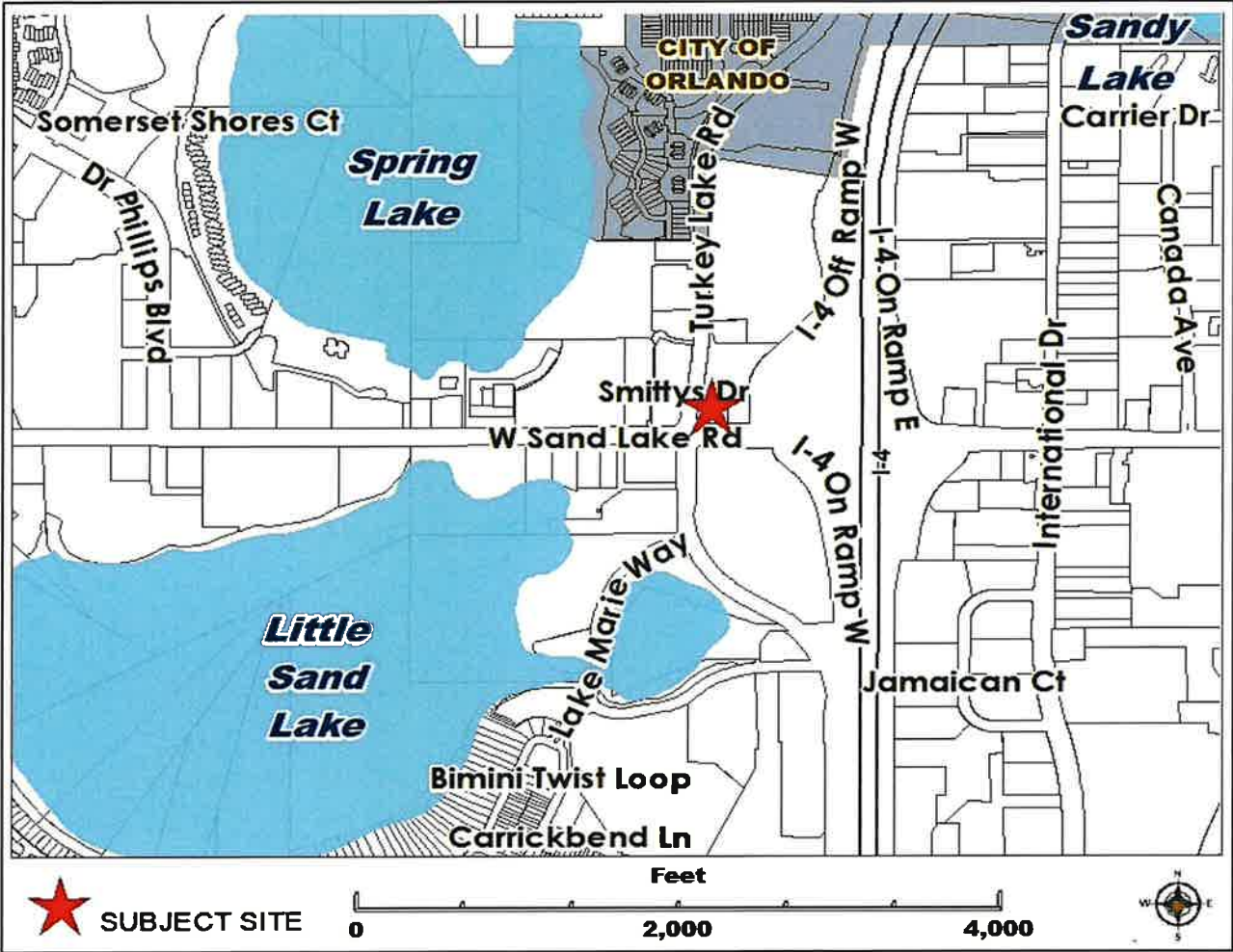
Attachment (Location map)

cc via email: Jon Weiss, P.E., Deputy County Administrator
Tanya Wilson, AICP, Director, Planning, Environmental, and
Development Services Department

If you have any questions regarding this map, please call Planning Division at 407-836-5600.

April 23, 2024
Request for Public Hearing – Joseph Kovecses For 7-Eleven
Variance Application
Page 3

Location Map





ORANGE COUNTY ZONING DIVISION
201 South Rosalind Avenue, 1st Floor, Orlando, Florida
32801 Phone: (407) 836-3111 Email: BZA@ocfl.net
www.orangecountyfl.net

Board of Zoning Adjustment (BZA) Appeal Application

Appellant Information

Name: Joseph A. Kovacs Jr., Esq.

Address: 215 N. Eola Ave., Orlando, FL 32801

Email: Joseph.Kovacs@lowndes-law.com Phone #: (407) 418-6704

BZA Case # and Applicant: VA-24-04-008 Joseph A. Kovacs Jr., Esq.

Date of BZA Hearing: April 4, 2024

Reason for the Appeal (provide a brief summary or attach additional pages of necessary):

See attached "Exhibit A".

Signature of Appellant: Joseph Kovacs Date: 4/10/24

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 10th day of April, 2024 by Joseph Kovacs who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

Nancy Lee Elswick
Notary Public Signature

Notary Stamp:  **NANCY LEE ELSWICK**
Notary Public
State of Florida
Comm# NH455399
Expires 11/18/2027

NOTICE: Per Orange County Code Section 30-45, this form must be submitted within 15 days after the Board of Zoning Adjustment meeting that the application decision was made.

Fee: \$691.00 (payable to the Orange County Board of County Commissioners)

Note: Orange County will notify you of the hearing date of the appeal. If you have any questions, please contact the Zoning Division at (407) 836-3111.

See Page 2 of application for the Appeal Submittal Process.



ORANGE COUNTY ZONING DIVISION
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32801 Phone: (407) 836-3111 Email: BZA@ocfl.net
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Board of Zoning Adjustment (BZA) Appeal Application

Appeal Submittal Process

1. Within 15 calendar days of the decision by the Board of Adjustment, the appellant shall submit the Board of Zoning Adjustment (BZA) Appeal Application to the Zoning Division in person. The application will be processed and payment of \$691.00 shall be due upon submittal. All justification for the appeal shall be submitted with the Appeal Application.
2. Zoning Division staff will request a public hearing for the subject BZA application with the Board of County Commissioners (BCC). The BCC hearing will be scheduled within forty-five (45) days after the filing of the appeal application, or as soon thereafter as the Board's calendar reasonably permits. Once the date of the appeal hearing has been set, County staff will notify the applicant and appellant.
3. The BCC Clerk's Office will provide a mailed public hearing notice of the hearing to property owners at a minimum of 500 feet from the subject property. Area Home Owner Associations (HOA) and neighborhood groups may also be notified. This notice will provide a map of the subject property, as well as a copy of the submitted appeal application.
4. Approximately one week prior to the public hearing, the memo and staff report of the request and appeal will be available for review by the applicant, appellant, and the public.
5. The decision of the BCC is final, unless further appealed to the Circuit Court. That process is detailed in [Section 30-46](#) of the Orange County Code.

Exhibit A – Reason for Appeal

Applicant respectfully appeals the Board of Zoning Adjustment (“BZA”) decision on VA-24-04-008 because it was based on incorrect applications of the Orange County Code (“Code”) and Florida law, erroneous assumptions by County Staff, and inadequate consideration of the variance criteria, including the special conditions and circumstances associated with this specific property, as provided in Code Sec. 30-43(3).

First, the BZA decision was based in part on an incorrect recitation of state statutory law that the BZA determined would allow the Applicant wide latitude to cut down trees on the property after the proposed billboard was constructed. The BZA implied that by approving the billboard, it would also be permitting the Applicant to cut down trees on the property to establish clear lines-of-sight to the billboard. Such a position is a mischaracterization of the law. The provision at issue, section 479.106, *Florida Statutes*, requires an application to the Department of Transportation (“DOT”) to remove, cut, or trim any trees on a property to ensure visibility of a sign, subject to DOT oversight and compliance considerations. Additionally, DOT may require a vegetation management plan which considers conservation and mitigation. Therefore, the implication that the Applicant could remove trees on the property at will as a direct result of a variance approval was a mischaracterization of the law and inappropriate for consideration.

Second, the BZA took the incorrect position as a basis for its decision that allowing the proposed billboard on Applicant’s property would allow any of the other property owners in the setback area to apply for similar billboard variances. Instead, Code Sec. 31.5-126(i) prohibits additional billboards within 1000 feet of an existing billboard on the same side of the road. There is already another digital billboard on the opposite side of the road from the proposed site. By operation of the Code, therefore, no other billboards would be allowed within approximately 1000 feet to the north and 1000 feet to the south of the existing proposed billboard location on either side of the road.

Third, the BZA discussed the County’s uncodified and unpublished “policy” with respect to billboards but did not analyze or apply the stated purposes behind the billboard ordinance included within the Code itself. The Staff Report explicitly found that the proposed billboard location and design met or exceeded all development standards for billboards contained within the Code, except for the 500-foot setback requirement from the I-4 ramp. Therefore, the BZA’s policy analysis was incorrect.

Fourth, the Staff Report erroneously cited to the Tourist Commercial Signage Overlay, which Staff testified at the hearing was not applicable to the proposed billboard location. However, the BZA used the reference to the Overlay to make unfounded assumptions about the County’s intent to prohibit billboards at the proposed location. Therefore, this was an improper basis for the BZA decision.

Fifth, the BZA also made unsupported assumptions about the billboard that is located almost directly across the Turkey Lake Road from the proposed location. Although Staff admitted

that the billboard across the road is in the same 500-foot setback area that is at issue in the variance application, Staff assumed, without a documentary basis, that the billboard across the street was constructed before the billboard setbacks were codified. Therefore, this was an improper basis for the BZA decision.

Sixth, the BZA assumed without evidence that lights associated with the proposed digital billboard would be distracting to drivers along Turkey Lake Road and West Sand Lake Road (even though the 500 feet setback is intended for the benefit of drivers on the I-4 ramp). Staff did not analyze this issue and provided no commentary or evidence in the Staff Report. The BZA made this assumption despite testimony from Staff that the billboard across the street was recently approved by the County to be converted to a digital billboard of a materially similar style and design as Applicant requested here. Also, Staff sent 116 notices of the variance application to neighboring property owners and received zero (0) objections from neighboring properties. Therefore, this was an improper basis for the BZA decision.

Seventh, the Applicant presented competent and substantial evidence to satisfy the variance criteria, which the BZA incorrectly characterized as assumptions it could not consider, despite basing its ultimate decision on assumptions from Staff and BZA members. Therefore, the BZA decision was not supported by the competent and substantial evidence presented at the hearing.

As a result of the foregoing, and for the reasons stated in Applicant's application and presentation materials, Applicant respectfully disagrees with the BZA decision and requests an appeal to, and reconsideration by, the Board of County Commissioners.