



## Interoffice Memorandum

DATE February 4, 2019

TO: Mayor Jerry L. Demings  
-AND-  
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director  
Planning, Environmental, and Development Services Department

CONTACT PERSON: Carol L. Knox, Manager, Zoning Division  
407-836-5585

February 26, 2019 – Appeal Public Hearing  
Applicant/Appellant: Michael Harding  
BZA Case #SE-18-12-172, December 6, 2018; District #3

Board of Zoning Adjustment (BZA) case #SE-18-12-172, located at 1510 Russell Avenue, in District 3, is an appeal public hearing to be heard on February 26, 2019. The applicant is requesting to amend a previous condition of approval #8 from February 1, 2018 (SE-18-02-154) to allow vehicular access on-site to Russell Ave. and to eliminate the required 4 ft. high wall along Russell Ave. The condition states "The applicant shall install an 8 foot high concrete or masonry wall on the north property line. The applicant shall install a 4 ft. high concrete or masonry wall along the east property line abutting Russell Avenue." The condition was added to protect the existing residential homes located north of the subject property from the commercial traffic.

The subject property is located north of Curry Ford Rd., on the west side of Russell Avenue.

At the December 6, 2018 BZA hearing, staff recommended approval of the special exception. The BZA stated the condition was placed to protect the residential development to the north, the applicant overlooked the condition, and constructed the parking lot contrary to the condition. The BZA recommended denial of the special exception with a 4-2 vote.

The application for this request is subject to the requirements of Article X, Chapter 2, Orange County Code, as may be amended from time to time, which mandates the disclosure of expenditures related to the presentation of items or lobbying of items before the BCC. A copy is available upon request in the Zoning Division.

If you have any questions regarding this matter, please contact Carol Knox at 6-5585 or Sean Bailey at 6-5806.

**ACTION REQUESTED:** Approve the applicant's request in its entirety; or  
Approve the applicant's request with modifications and/or  
conditions; or  
Deny the applicant's request in its entirety  
District #3

JVW/CLK/pw  
Attachment

**COMMUNITY ENVIRONMENTAL DEVELOPMENT SERVICES DEPARTMENT  
ZONING DIVISION PUBLIC HEARING REPORT  
February 26, 2019**

The following is a public hearing on an appeal before the Board of County Commissioners on February 26, 2019 at 2:00 p.m.

**APPELLANT/APPLICANT:** MICHAEL HARDING

**REQUEST:** BZA APPEAL ON 12/20/18  
Special Exception to amend condition of approval #8 from February 1, 2018 (SE-18-02-154) to allow vehicular access on-site to Russell Ave.

**LOCATION:** North of Curry Ford Rd., west of Russell Ave.

**TRACT SIZE:** 50 ft. x 150 ft./ .172 acres

**ZONING:** R-1

**DISTRICT:** #3

**PROPERTIES NOTIFIED:** 103

**BOARD OF ZONING ADJUSTMENT (BZA) HEARING SYNOPSIS ON REQUEST:**

Staff presented the case, and went over the previous special exception approval from February 2018. The applicant is seeking to amend condition of approval #8 from the February approval, which required a 4 ft. high wall be constructed along Russell Ave. The applicant was approved to allow a parking lot on this site per the conditions of approval.

The applicant stated that the parking lot was in fact constructed without a building permit. He also stated it makes more sense logistically to provide egress to Russell directly from the site rather than passing through the commercial property to the south. The applicant believes this will improve the maneuverability on the site and allow the traffic to flow better.

No one spoke in favor or in opposition of the case at the hearing.

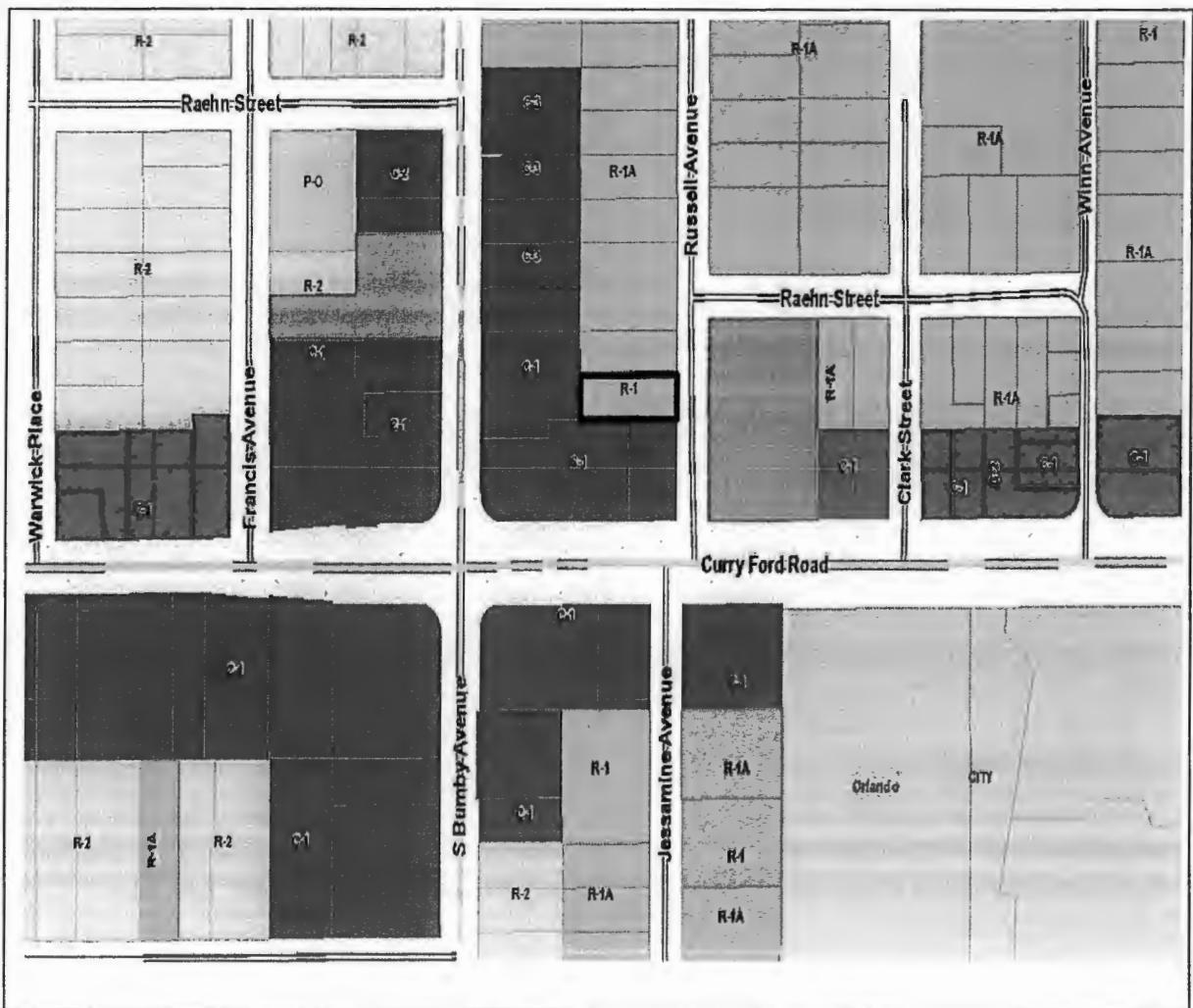
Staff presented the original site plan from the February case and the BZA had questions on the differences between the old site plan and the new one.

The BZA discussed the case and the fact that the applicant built the parking lot without permits and contrary to the BZA conditions of approval. They agreed that the wall was necessary to provide a buffer against the nearby residential homes.

The BZA denied the request to amend condition of approval #8 as it did not meet the special exception criteria.

**BZA HEARING DECISION:**

A motion was made by Wes A. Hodge, seconded by Eugene Roberson, II and unanimously carried to DENY the Special Exception request in that the Board finds it did not meet the requirements governing Special Exceptions as spelled out in Orange County Code, Section 38-78, and that the granting of the Special Exception does adversely affect general public interest (4 in favor, 2 opposed).



**Applicant:** MICHAEL HARDING

**BZA Number:** SE-18-12-172

**BZA Date:** 12/06/2018

**District:** 3

**Sec/Twn/Rge:** 31-22-30-SE-D

**Tract Size:** 50 ft. x 150 ft. / .172 acres

**Address:** 1510 Russell Avenue, Orlando FL 32806

**Location:** North of Curry Ford Rd., west of Russell Ave.

**Appellant Information**

Appellant: NV Acquisition Management LLC

Address: 210 N. Bumby Orlando, Fl. 32803

Email: giovanni@nationalrealestate.com Phone #: 702-296-6945

BZA Case # and Applicant: #SE-18-12-172 Michael D. Harding

Date of BZA Hearing: 12-06-2018

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

Staff recommended approval.

If the conditions of the original conditions have to be met the subject parking lot  
will not function properly and there will be a loss of some major Oak Trees.

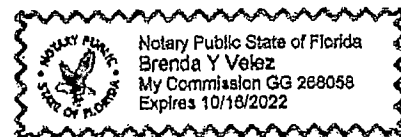
Date: 12/11/18 Signature of Appellant: \_\_\_\_\_

STATE OF Florida  
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 11 day of  
December, 2018, by Giovanni Femoral who is personally known to me or  
who has produced DL as identification and who did/did not take an oath.

Brenda Y Velez  
Notary Public Signature

Notary Stamp:



Fee: \$691.00 (make check payable to the Orange County Zoning Division)

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

**MICHAEL HARDING**  
**SE-18-12-172**

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**REQUEST:** Special Exception to amend condition of approval #8 from February 1, 2018 (SE-18-02-154) to allow vehicular access on-site to Russell Ave.  
**ADDRESS:** 1510 Russell Avenue, Orlando FL 32806  
**LOCATION:** North of Curry Ford Rd., west of Russell Ave.  
**S-T-R:** 31-22-30  
**TRACT SIZE:** 50 ft. x 150 ft./ .172 acres  
**DISTRICT#:** 3  
**LEGAL:** ORANGE VILLA K/21 LOT 7  
**PARCEL ID:** 31-22-30-6268-00-070  
**NO. OF NOTICES:** 103

**DECISION:** **DENIED** the Special Exception request in that the Board finds it did not meet the requirements governing Special Exceptions as spelled out in Orange County Code, Section 38-78, and that the granting of the Special Exception does adversely affect general public interest (4 in favor, 2 opposed and 1 absent).

**SYNOPSIS:** Staff presented the case, and went over the previous Special Exception approval from February 2018. The applicant is seeking to amend condition of approval #8, from the February approval, which required a four (4) foot high wall be constructed along Russell Avenue. The applicant was approved to allow a parking lot on this site per the conditions of approval.

The applicant stated that the parking lot was in fact constructed without a building permit. He also stated it makes more sense logistically to provide egress to Russell directly from the site rather than passing through the commercial property to the south. The applicant believes this will improve the maneuverability on the site and allow the traffic to flow better.

No one spoke in favor or in opposition of the case at the hearing.

Staff presented the original site plan from the February case and the BZA had questions on the differences between the old site plan and the new one.

The BZA discussed the case and the fact that the applicant had built the parking lot without permits and contrary to the BZA conditions of approval. The BZA agreed that the wall was necessary to provide a buffer against the nearby residential homes.

The BZA denied the request to amend condition of approval #8, as it did not meet the Special Exception Criteria.

**M Harding Enterprises, Inc.**

5005 Jennifer Place, Orlando Florida 32807

Phone: 407-342-8386

Email: [michael@mhardingenterprises.com](mailto:michael@mhardingenterprises.com)

October 17, 2018

Orange County Zoning Division  
201 South Rosalind Avenue, 1<sup>st</sup> Floor  
Orlando, Florida 32801  
Email: [BZAnotices@ocfl.net](mailto:BZAnotices@ocfl.net)

Re: Special Exception 1510 Russell Ave. Parcel ID 31-22-30-6268-00-070

Division Manager,

The purpose of the special exception is to revise and appeal 2 conditions required by the last special exception on this property. This parcel was reviewed under case number #SE-18-02-154 on February 1, 2018 by the BZA. The specific conditions are listed in the Staff Findings and Analysis as well as the Recommendations. Item 7 of the Findings states that *the applicant agreed to limit access to Russell Ave. through the commercial property and will construct a (6) foot wall along the north property line and a (4) foot high wall along the front or Russell side of the lot.* These conditions are not practical or conducive to an efficient operating parking facility for the commercial properties in this new Hourglass District.

Currently, this lot is filled most of the time with customers of the Foxtail Coffee Shop during the day and the Claddagh Cottage Irish Pub at night. The owner and operator of the Pub is using the brick paver portion of the commercial driveway for his employee parking as they park in shifts. The configuration of the access into the Residential portion of the lot is used by the public and patrons. The connecting drive isle or access has two sharp 90 degree turns that are very difficult to negotiate and any different configuration would further reduce the number of parking spaces.

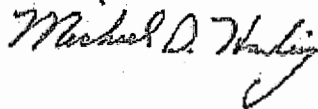
Building the (6) foot masonry wall between the residential property to the north is still acceptable to the developer and the owner of the Residential property. Constructing the (4) foot wall along the east side or Russell frontage and blocking the access is not acceptable for the stated reasons. Building shorter sections of the (4) foot wall along Russell most likely would damage the large Oak tree south of the access and the short section north of the access has no real purpose. Generally, we understand, the staff would like to have this (4) foot wall to act as a buffer between the parking on the residential lot and the property along the east side of Russell. Currently the property east of Russell is being used as grassed parking by the adjacent business and is not available to these businesses.

Additionally, the developer would like to install a dumpster on this parcel. Currently the operator of the Claddagh Cottage, located at 2421 Curry Ford Road, must transport his daily waste nearly 300 feet to the only available dumpster located on the west side of the center north of the Mobile Gas Station. The original site plan had a dumpster located in the parking field and was denied by staff. A dumpster could be located directly north of the drive isle along the west side of the 2421 Building which would allow waste management trucks to easily retrieve the dumpster, a second option would be along the western edge of the parking field, which would allow the truck to retrieve the can but would require a reversing action to get back out.

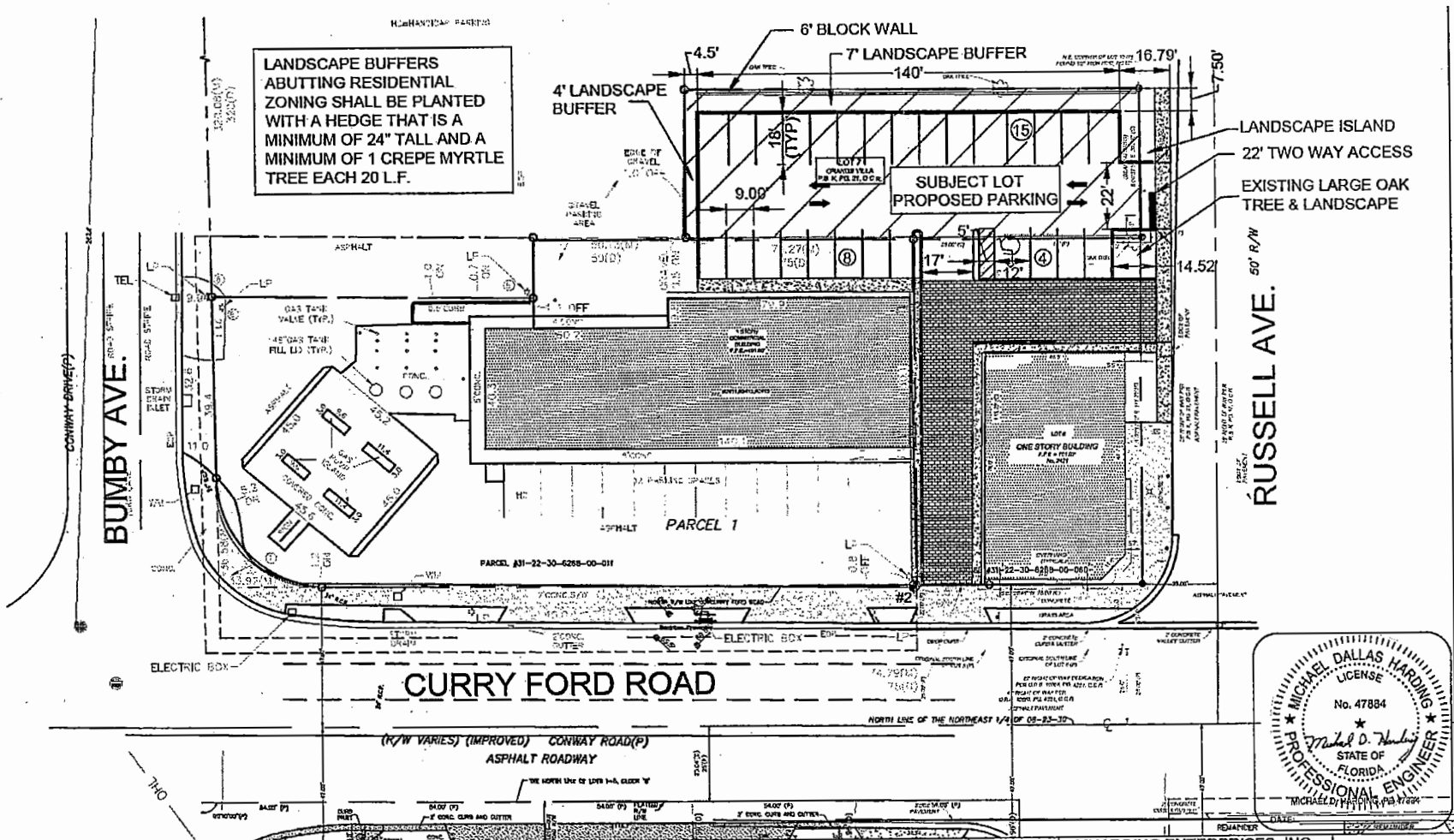
This request is in accordance to each item listed in the Special Exception Criteria. Item 2 lists that the use shall be similar and compatible and consistent with the surrounding development. This developer had invested a lot of time, effort and money into the re-development of this under utilized and run-down portion of west Curry Ford Road. There is a new and exciting change in the area with new guests and patrons each day, this parking facility is required to continue the growth and development of this area. The parking lot has been designed and built to the current standards and is currently functioning in a safe and efficient manner.

Thank you for your consideration in this request and your cooperation in making the Hourglass District a more viable and accessible location.

Sincerely,

A handwritten signature in cursive script that reads "Michael D. Harding". The signature is written in dark ink and is positioned above the typed name.

Michael D. Harding, P.E.  
MHarding Enterprises, Inc.





STAFF REPORT  
CASE #SE-18-12-172  
Orange County Zoning Division  
Planner: Sean Bailey  
Board of Zoning Adjustment  
December 6, 2018  
Commission District: 3

GENERAL INFORMATION:

APPLICANT: MICHAEL HARDING

HEARING TYPE: Board of Zoning Adjustment

REQUEST: Special Exception to amend condition of approval #8 from February 1, 2018 (SE-18-02-154) to allow vehicular access on-site to Russell Ave.

This is a result of Code Enforcement action.

LOCATION: North of Curry Ford Rd., west side of Russell Ave.

PROPERTY ADDRESS: 1510 Russell Ave., Orlando, FL 32810

PARCEL ID: 31-22-30-6268-00-070

PUBLIC NOTIFICATION: 103

TRACT SIZE: 50 ft. x 150 ft. / .172 acres

DISTRICT #: 3

ZONING: R-1

EXISTING USE(S): Parking lot

PROPOSED USE(S): Parking lot

SURROUNDING USES: N – Residential  
S – Commercial  
E – Professional Office  
W – Commercial

## STAFF FINDINGS AND ANALYSIS:

1. The property is zoned R-1, Single Family Dwelling district. This district allows for residential homes and certain uses as special exceptions, such as parking lots.
2. A Special Exception was approved on the subject site on February 20, 2018 (SE-18-02-154), to allow a commercial parking lot to serve the adjacent commercial uses to the south. The site plan that was approved with this special exception had been provided by the applicant at the request of staff and did not show vehicular ingress or egress from the subject site to Russell Avenue as this is a residentially zoned lot adjacent to a residential neighborhood to the north. There is also another curb cut approximately 15 ft. to the south of this property that also serves the commercial properties, and Development Engineering agreed that the location of these two driveways so close to each other could cause conflicts.

There were also eight conditions of approval. Condition number 5 addressed the location of the dumpster shown on the site plan and condition number 8 addressed screening of the parking from the residential property to the north and Russell Avenue to the east. The conditions are as follows:

Condition #5: "The parking lot shall comply with Chapter 38-1476 and the dumpster shall not be located on the residential lot."

Condition #8: "The applicant shall install an 8 foot high concrete or masonry wall on the north property line. The applicant shall install a 4 ft. high concrete or masonry wall along the east property line abutting Russell Avenue."

3. Upon approval of the special exception, the applicant constructed the parking lot in its current configuration without a permit and inconsistent with the site plan and special exception conditions of approval.
4. Zoning staff became aware of the parking lot construction in May and contacted the owner on May 16, 2018 to advise them that a permit was required.
5. The applicant submitted for a building permit in June 2018 (B18903169), but that application was denied, as it did not meet the conditions of the BZA approval. The owner was cited by Code Enforcement in October 2018 (incident #525490) for construction without an approved permit and for violating the conditions of the BZA approval.
6. The applicant is now requesting a special exception to revise the approved site plan to allow for vehicular ingress and egress from the subject site to Russell Avenue and to revise the original conditions of approval regarding the location of the dumpster and the required screening walls. Specifically they are asking to install a dumpster on the subject site and to remove the condition regarding the 4 ft. screen wall along Russell Avenue.

7. The commercial dumpster meant to serve the commercial uses to the south is not a permitted use on this residentially zoned lot, which is why the original condition was added. The BZA cannot grant variances for use, therefore this request was not advertised.

8. In review of the conditions regarding the screening, staff had originally asked for a 6 ft. high concrete or masonry wall along the north property line. The BZA amended that condition at the hearing to require an 8 ft. wall. Given that the use of this property is primarily intended for single family residential, the screening of the residential property to the north and the screening of the parking lot from the residential neighborhood to the north are appropriate conditions to off-set the commercial parking on this lot.

With the addition of the driveway from the parking lot to Russell Ave., only a smaller portion of the 4 ft. wall can be built. There are also several large trees on the north side of the property where the construction of a concrete or masonry wall might impact the root system. As a result, staff is recommending a revised condition of approval regarding the screening.

9. The revised site plan shows the ingress and egress to Russell Ave. While staff has concerns about the two curb cuts so close together, the functionality of the parking lot is better served by access to Russell Avenue in the proposed location.

#### **SPECIAL EXCEPTION CRITERIA**

**The use shall be consistent with the Comprehensive Policy Plan.**

The Future Land Use is Low Density Residential and with the approval of the special exception, the project will be consistent with the Comprehensive Plan.

**The use shall be similar and compatible with the surrounding area and shall be consistent with the pattern of surrounding development.**

The proposed use is located adjacent to the commercial uses to the south. With the recommended conditions of approval to protect the residential areas to the north, it will be consistent with the pattern of the surrounding development of the area.

**The use shall not act as a detrimental intrusion into a surrounding area.**

The use, in conjunction with the conditions of approval, will not be a detrimental intrusion, as it will act as a transition between the commercial and residential zoning districts.

**The use shall meet the performance standards of the district in which the use is permitted.**

The plan submitted meets the parking space requirements per code.

**The use shall be similar in noise, vibration, dust, odor, glare, heat producing and other characteristics that are associated with the majority of uses currently permitted in the zoning district.**

The use as a parking lot, with the conditions of approval to protect the residential area will have similar characteristics as other uses in the area.

**Landscape buffer yards shall be in accordance with section 24-5 of the Orange County Code. Buffer yard types shall track the district in which the use is permitted.**

The applicant is proposing a 7.5 ft. wide landscape buffer along the north side of the parking lot along with a 6 ft. wall per staff's original condition of approval. While a landscape plan has not been submitted, it will be required at the time of permitting.

**STAFF RECOMMENDATION:**

Staff recommends approval of the request subject to the following conditions:

1. Development in accordance with the site plan dated November 18, 2018, and all other applicable regulations. Any deviations, changes, or modifications to the plan are subject to the Zoning Manager's approval. The Zoning Manager may require the changes be reviewed by the Board of Zoning Adjustment (BZA) for administrative approval or to determine if the applicant's changes require another BZA public hearing.
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of Zoning Adjustment shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. The parking lot shall comply with Chapter 38-1476.
5. The project shall comply with Article XVI of Chapter 9 of the Orange County Code, "Exterior Lighting Standards."
6. A permit shall be issued within 6 months or this approval becomes null and void.

7. Landscaping shall be in accordance with Chapter 24, Orange County Code.
8. A six (6) foot high post and panel wall shall be installed along the western 125 ft. of the north property line. A four (4) foot concrete or masonry high knee wall shall be installed along the eastern 25 feet of the north property line and along the eastern portion of the parking lot from the north property line to the access along Russell Avenue.

c: Michael Harding  
5005 Jennifer Place  
Orlando, FL 32807