



## Interoffice Memorandum

DATE: April 23, 2019

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

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

CONTACT PERSON: Eric Raasch, Interim DRC Chairman  
Development Review Committee  
Planning Division  
(407) 836-5523

SUBJECT: May 21, 2019 – Public Hearing  
Planning and Zoning Commission Appeal  
Appellant: Michael D. Harding, MHarding Enterprises, Inc.  
Applicant: Michael D. Harding, MHarding Enterprises, Inc.  
Case # RZ-19-01-061 / District 5

This request is an appeal of the March 21, 2019, Planning and Zoning Commission (PZC) decision to recommend denial of the aforementioned rezoning application.

The applicant is seeking to rezone a 0.83 acre property located at 7309 E. Colonial Drive from C-1 (Retail Commercial District) to C-2 (General Commercial District) for outdoor storage and display of merchandise and overnight vehicle parking. A community meeting was not required for this request. This appeal was received from the appellant on April 4, 2019.

Finally, the required Specific Project Expenditure Report and Relationship Disclosure Forms have been completed in accordance with the requirements of Article X, Chapter 2, Orange County Code, as may be amended from time to time, and copies of these may be found in the Planning Division for further reference.

**ACTION REQUESTED: Make a finding of inconsistency with the Comprehensive Plan and deny the requested C-2 (General Commercial District) zoning. District 5**

JVW/EPR/stt  
Attachments

**CASE # RZ-19-01-061**

Commission District: #5

**GENERAL INFORMATION**

<b>APPELLANT</b>	Michael D. Harding, MHarding Enterprises, Inc.
<b>APPLICANT</b>	Michael D. Harding, MHarding Enterprises, Inc.
<b>OWNERS</b>	Yogi Carpet and Tile, Inc.
<b>HEARING TYPE</b>	Planning and Zoning Commission
<b>REQUEST</b>	<b>C-1</b> (Retail Commercial District) to <b>C-2</b> (General Commercial District)
<b>LOCATION</b>	7309 E. Colonial Drive; or generally located on the north side of E. Colonial Drive, the west side of Dorris Drive, approximately 1,100 feet east of N. Forsyth Road
<b>PARCEL ID NUMBER</b>	14-22-30-8646-02-090
<b>TRACT SIZE</b>	0.83-gross acre
<b>PUBLIC NOTIFICATION</b>	The notification area for this public hearing was 500 feet [Chapter 30-40(c)(3a) of the Orange County Code requires 300 feet]. One hundred ninety-three (193) notices were mailed to those property owners in the mailing area. A community meeting was not required for this application.
<b>PROPOSED USE</b>	Outdoor storage and display of merchandise and overnight vehicle parking

**STAFF RECOMMENDATION**

**PLANNING**

Make a finding of inconsistency with the Comprehensive Plan and recommend **DENIAL** of the requested C-2 (General Commercial District) zoning.

**ALTERNATIVE RECOMMENDATION**

Make a finding of consistency with the Comprehensive Plan and recommend **APPROVAL** of the requested C-2 (General Commercial District) zoning, subject to the following restrictions:

- 1) New billboards and pole signs shall be prohibited;
- 2) The applicant / developer shall submit a site plan to demonstrate compliance with all Orange County Code requirements (including landscaping and paved surfaces) prior to the accommodation of any C-2 uses;
- 3) All overnight vehicle parking shall be located on a paved surface; and
- 4) The subject property shall be limited to C-1 (Retail Commercial District) uses, as well as the C-2 (General Commercial District) use of outdoor display, outdoor storage, and overnight vehicle parking (excluding truck rentals). All other C-2 uses shall be prohibited.

## **IMPACT ANALYSIS**

### **Land Use Compatibility**

The C-2 (General Commercial District) zoning would allow for development that is incompatible with the character of the surrounding area and may adversely impact adjacent properties.

### **Comprehensive Plan (CP) Consistency**

The underlying CP Future Land Use Map (FLUM) designation of the subject properties is Commercial (C). While the requested C-2 (General Commercial District) zoning is consistent with the "C" FLUM designation, it is inconsistent with the following Comprehensive Plan provisions:

**FLU1.4.2** states that land use changes are compatible with and serve existing neighborhoods.

**FLU1.4.4** states that the disruption of residential areas by poorly located and designed commercial activities shall be avoided.

**FLU8.1.1** states that the zoning and future land use correlation shall be used to determine consistency with the Future Land Use Map. Land use compatibility, the location, availability and capacity of services and facilities, market demand, and environmental features shall also be used in determining which specific zoning district is most appropriate. Density is restricted to the maximum and minimum allowed by the Future Land Use Map designation regardless of zoning.

**OBJ FLU8.2** states that compatibility will continue to be the fundamental consideration in all land use and zoning decisions.

**FLU8.2.1** states that land use changes shall be required to be compatible with existing development and development trend in the area. Performance restrictions and/or conditions may be placed on property through the appropriate development order to ensure compatibility. No restrictions or conditions shall be placed on a Future Land Use Map change.

**FLU8.2.11** states that compatibility may not necessarily be determined to be a land use that is identical to those uses that surround it. Other factors may be considered, such as the design attributes of the project, its urban form, the physical integration of a project and its function in the broader community, as well its contribution toward the Goals and Objectives in the CP. The CP shall specifically allow for such a balance of considerations to occur.

**OBJ N1.1** states that future land use changes are shall be compatible with or do not adversely impact existing or proposed neighborhoods.

### **SITE DATA**

<b>Existing Use</b>	Retail Flooring
<b>Adjacent Zoning</b>	N: R-1A (Single-Family Dwelling District) (1957) E: C-1 (Retail Commercial District) (1957) W: C-1 (Retail Commercial District) (1957) S: C-2 (General Commercial District) (1968)

*\*No zoning restrictions apply to the above*

<b>Adjacent Land Uses</b>	N: Single-Family Residential E: Office W: Restaurant S: Automobile Sales
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### **C-2 (General Commercial District) Development Standards**

Min. Lot Area:	8,000 sq. ft.
Min. Lot Width:	100 ft. (on major streets, see Article XV) 80 ft. (on all other streets)
Max. Height:	50 ft. (35 ft. within 100 ft. of all residential districts)
Min. Floor Area:	500 sq. ft.

#### **Building Setbacks**

Front:	25 ft.
Rear:	15 ft. (20 ft. when abutting residential)
Side:	5 ft. (25 ft. when abutting residential)

### **Intent, Purpose, and Uses**

The intent and purpose of the C-2 zoning district is to provide for the retailing of commodities and the furnishing of several major services, selected trade shops and automotive repairs. This district is encouraged at locations along minor arterial and major arterial roads where general commercial uses would be compatible with the surrounding neighborhood, yet not adjacent to residential uses. This district typically

occupies an area larger than that of the retail commercial district, serves a considerably greater population, and offers a wider range of services. This district is only promoted within the urban service area where uses of this intensity have already been established.

Specific uses shall be identified by the letter "P" in the use table set forth in Section 38-77 of the Orange County Code and include new and used automobile sales; car rental and leasing; auto painting and body shops; special trade contractors' offices (storage, equipment yards, and offices with outdoor storage); automobile parking lots and parking garages; outdoor storage and display of equipment, products, and merchandise; landscaping and irrigation businesses; commercial kennels; caterers; etc.

## **SPECIAL INFORMATION**

### **Subject Property Analysis**

The subject property is located at 7309 E. Colonial Drive; or generally located on the north side of E. Colonial Drive, the west side of Dorris Drive, approximately 1,100 feet east of N. Forsyth Road. The E. Colonial Drive corridor is developed with a mixture of commercial properties of varying intensities as well as a single-family residential neighborhood to the north of the subject property.

Through this request, the applicant is seeking to rezone the subject property from C-1 (Retail Commercial District) to C-2 (General Commercial District) in order to permit outdoor storage and display of merchandise and overnight vehicle parking related to the business. This rezoning has been initiated as a result of code enforcement action, as outdoor storage and display, as well as overnight vehicle parking, is not permitted in the C-1 zoning district.

Although the subject parcel is located near existing C-2 zoned property, staff has determined that the proposed request to rezone the subject property to C-2 zoning district would adversely impact the adjacent single-family development and may encourage the advancement of additional C-2 or C-3 zoning adjacent to the existing single-family neighborhood.

Furthermore, Orange County Code Section 38-851, states that the C-2 zoning district should not be located adjacent to single-family residential zoning districts. This is because of the variety of uses that are permitted in the C-2 zoning district that are incompatible with single-family zoned properties, such as outdoor storage, vehicle repair, outdoor sales, etc.

While there are C-2 and C-3 parcels located near the subject property adjacent to the single-family neighborhood, most of the existing C-2 and C-3 zoned parcels have been zoned in their current state prior to the adoption of the C-2 and C-3 residential adjacency requirements in 1995.

Lastly, Orange County Comprehensive Plan Policies FLU 1.4.2 and 1.4.4 require that all land use changes be compatible with existing neighborhoods and that poorly located / designed commercial activities near residential areas be avoided. Given this analysis, staff is recommending denial of this application.

**Comprehensive Plan (CP) Amendment**

A CP amendment is not required for this application, as the requested zoning is consistent with the underlying Commercial (C) Future Land Use Map (FLUM) designation.

**State of Florida Notice**

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.

**Community Meeting Summary**

A community meeting was not required for this request.

**Rural Settlement**

The subject property is not located within a Rural Settlement.

**Joint Planning Area (JPA)**

The subject property is not located within a JPA.

**Overlay District Ordinance**

The subject property is located within the State Road 436 / State Road 50 Corridor Overlay District. This overlay district prohibits the operation of certain uses within its boundaries. The proposed use is not prohibited by this overlay district.

**Airport Noise Zone**

The subject property is located within Airport Noise Zone "E".

**Environmental**

Any miscellaneous garbage, hazardous waste, yard waste (including excess fertilizers, herbicides and pesticides), and construction or demolition debris shall be disposed of off-site according to the solid waste and hazardous waste regulations.

**Transportation / Access**

Based on the Concurrency Management System database dated December 20, 2018, there are no failing roadways within a one mile radius of this project and capacity is available to be encumbered. This information is dated and is subject to change. An approved Capacity Encumbrance Letter (CEL) is required prior to obtaining building permit.

**Code Enforcement**

When this request went to the March 21, 2019 Planning and Zoning Commission meeting, there was one (1) active Code Enforcement case on the subject property. This case was filed under Incident #521781, which relates to the outdoor storage and display

of merchandise, open storage of junk and debris, storage of a dual rear wheel vehicle, lack of permits for a fence, and occupation of a Recreational Vehicle (RV) on the property. This violation was heard at the February 4, 2019 Code Enforcement Board (CEB) hearing, where the applicant was deemed guilty by the CEB. On March 20, the outstanding violations were deemed rectified and the incident closed.

As of the writing of this staff report, there is one (1) active Code Enforcement case on the subject property. This case is filed under Incident #534967, which related to having window signage in excess of what is permitted per Orange County Code. This rezoning has no bearing on the outcome of this violation.

**Utilities**

Water:	Orange County Utilities	12-inch watermain within the E. Colonial right-of-way
Wastewater:	Orange County Utilities	8-inch and 21-inch gravity main within the E. Colonial right-of-way
Reclaim Water:	Orange County Utilities	Not available

**Schools**

Orange County Public Schools (OCPS) did not comment on this case, as it does not involve an increase in residential units or density.

**Parks and Recreation**

Orange County Parks and Recreation did not comment on this case, as it does not involve an increase in residential units or density.

**Specific Project Expenditure Report and Relationship Disclosure Form**

The original Specific Project Expenditure Report and Relationship Disclosure Form are currently on file with the Planning Division.

**ACTION REQUESTED**

**Planning and Zoning Commission (PZC) Recommendation – (January 17, 2019)**

**Make a finding of inconsistency with the Comprehensive Plan and recommend DENIAL of the requested C-2 (General Commercial District) zoning.**

**PLANNING AND ZONING COMMISSION (PZC) PUBLIC HEARING SYNOPSIS**

The staff report was presented to the PZC with the recommendation that they make a finding of inconsistency with the Comprehensive Plan and recommend denial of the requested C-2 (General Commercial District) zoning.

Staff indicated that one hundred ninety-three (193) notices were mailed to surrounding property owners within a buffer of 500 feet from the subject property, with zero (0)

commentaries received in favor of the request, and four (4) in opposition. The applicant was present for the hearing and disagreed with staff's recommendation. One (1) member of the public was present who voiced her opposition to the request due to storage of equipment, vehicles, and merchandise in the shared public alley.

After lengthy discussion regarding prior code enforcement action, general operation of the property, and site compliance with the code, a motion was made by Commissioner Spears to find the request to be inconsistent with the Comprehensive Plan and recommend DENIAL of the C-2 (General Commercial District) zoning. Commissioner Cantero seconded the motion, which then carried on a 9-0 vote.

**Motion / Second**

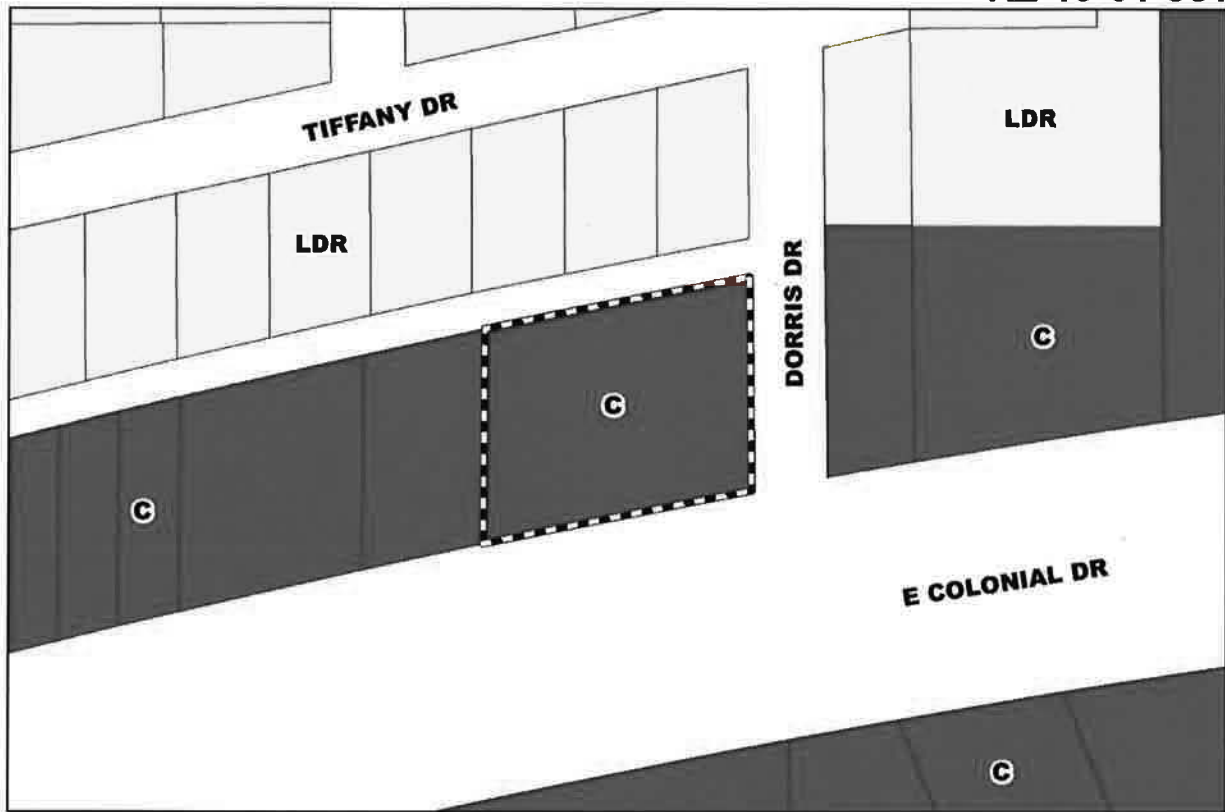
*Gordon Spears / Jose Cantero*

**Voting in Favor**

*Gordon Spears, Jose Cantero, Jaja Wade, Diane Velazquez, Jimmy Dunn, Carlos Nazario, Mohammed Abdallah, Yog Melwani, and Eddie Fernandez*



RZ-19-01-061



Subject Property



Subject Property

### Future Land Use Map

FLUM: Commercial (C)

APPLICANT: Michael D. Harding,  
 MHarding Enterprises, Inc.

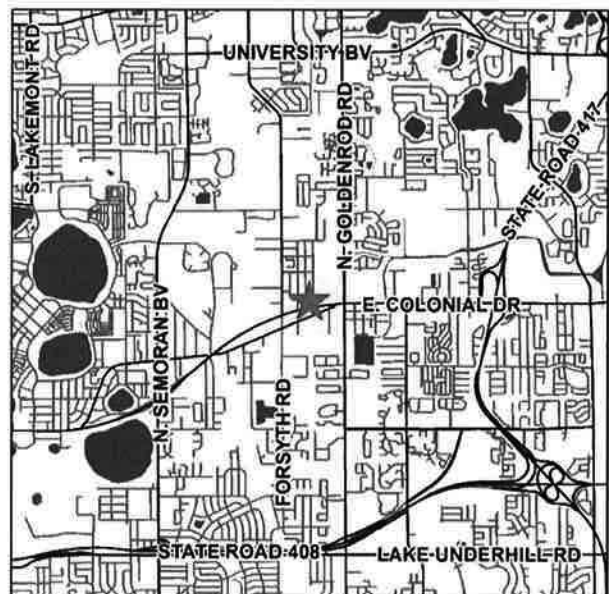
LOCATION: 7309 E. Colonial Drive; or generally located  
 on the north side of E. Colonial Drive, the  
 west side of Dorris Drive, approximately  
 1,100 feet east of N. Forsyth Road

TRACT SIZE: 0.83-gross acre

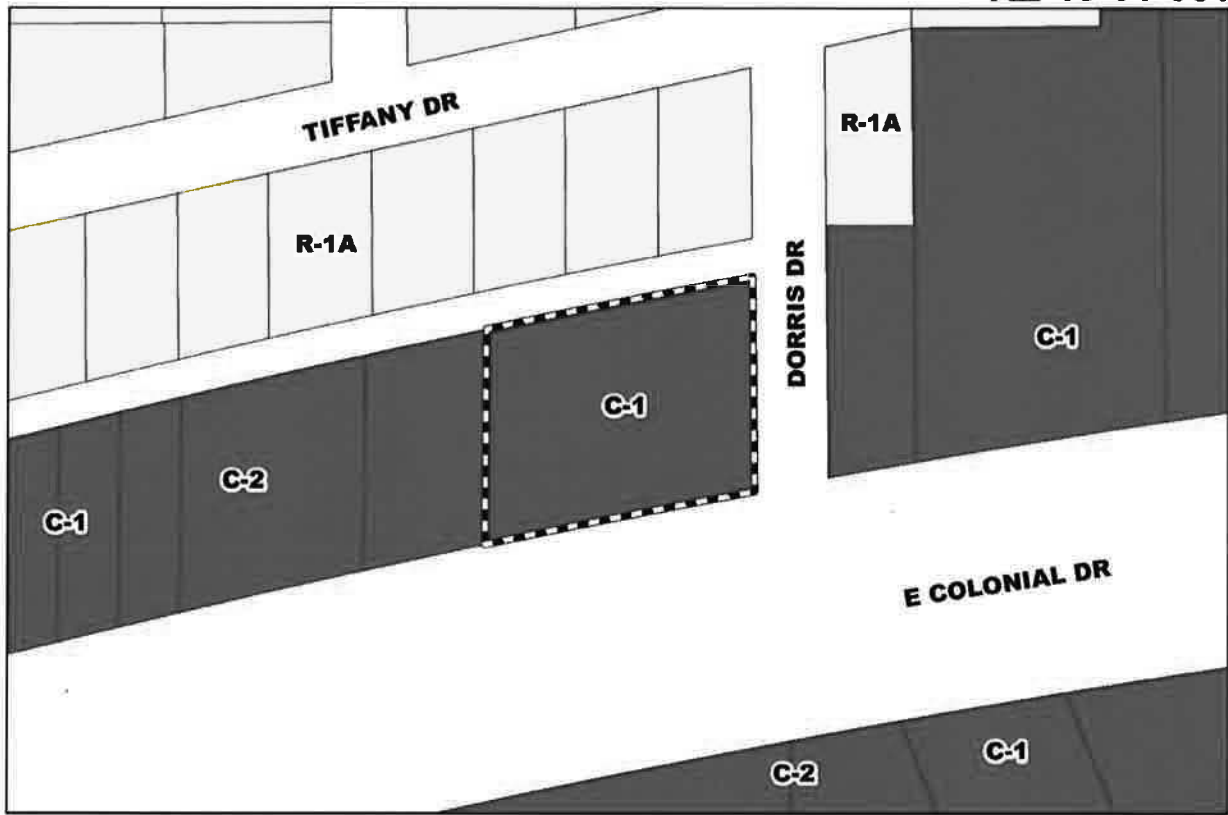
DISTRICT: # 5

S/T/R: 14/22/30

1 inch = 125 feet



RZ-19-01-061



 Subject Property



★ Subject Property

### Zoning Map

**ZONING:** C-1 (Retail Commercial District) to  
 C-2 (General Commercial District)

**APPLICANT:** Michael D. Harding,  
 MHarding Enterprises, Inc.

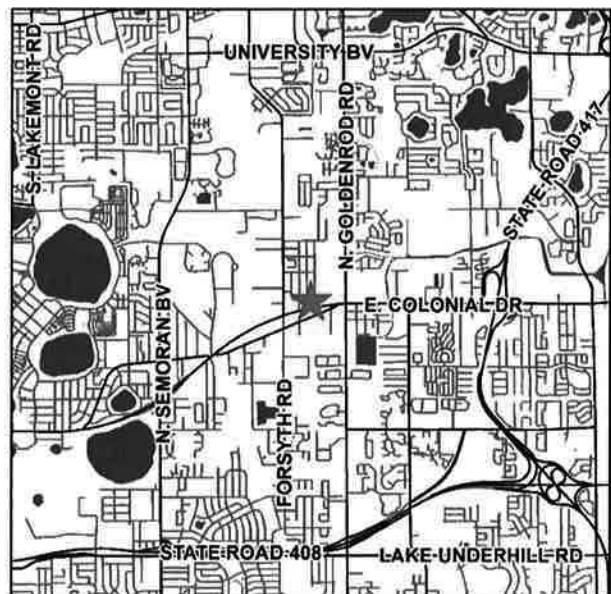
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 1,100 feet east of N. Forsyth Road

**TRACT SIZE:** 0.83-gross acre

**DISTRICT:** # 5

**S/T/R:** 14/22/30

1 inch = 125 feet



RZ-19-01-061



**Subject Property**



**1 inch = 100 feet**



## PLANNING & ZONING COMMISSION REZONING APPEAL APPLICATION

Orange County Planning Division  
201 South Rosalind Avenue, 2<sup>nd</sup> Floor,  
Post Office Box 1393  
Orlando, Florida 32802-1393

Main Line: (407) 836-5600  
P&ZC Secretary: (407) 836-5632

RECEIVED

APR 04 2019

Planning Division

Date: 4-1-2019

Appellant: Michael D. Harding, P.E.

(Print or type name)

Representing: Yogi Carpet and Tile Inc.

(Print or type company, group, or organization name)

Address: 7309 E. Colonial Dr.

Orlando, Fl. 32807

Telephone: 407.342.8386

Fax: \_\_\_\_\_

E-mail: michael@mhardingenterprises.com

Respectfully request an appeal of the decision regarding rezoning number RZ - 1 - 9 - 0 - 1 - 0 - 6 - 1,

the Applicant being Michael D. Harding

(Print or type Applicant name)

, rendered by the Orange

County Planning & Zoning Commission on 21 March 2019

Reason for appeal (provide a brief summary or attach additional documentation if necessary):

The commission heard testimony from an individual related to the property adjacent to this property to the west,

7229 E. Colonial Drive. This individual provided photographs and descriptions of the alley being blocked by this

owner, these complaints are not related to the specific zoning change request. Furthermore; these photographs and

information is more than 2 years old and are no longer relevant to the case. The owner of the property at 7229 E.

Colonial has insufficient parking for their restaurant business and had an agreement with the owner of the parcel

being heard, 7309 E. Colonial, to provide the additional parking. That agreement has broken down and has caused

discord between owners. I feel as though the denial was emotional on the part of the commission and not based on  
merit.

Signature

M.D. Harding

Date 4.3.19

**FEE: \$483.00** Planning & Zoning Commission appeals. Make check payable to the  
Orange County Board of County Commissioners

**NOTE:** The Clerk of the Board will notify you of the date of your appeal.

05/2017

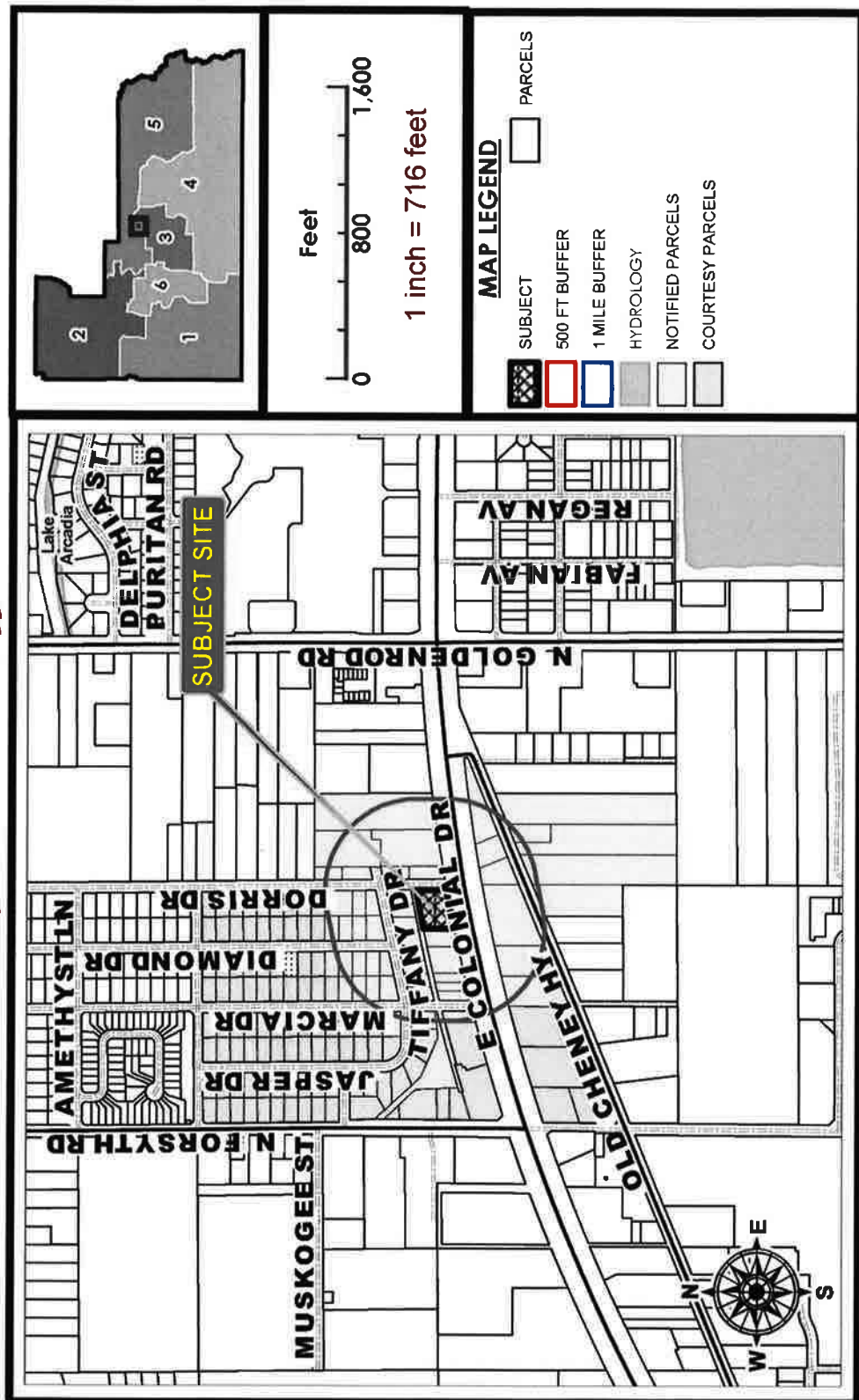


# Public Notification Map

RZ-19-01-061\_7309 E Colonial Drive

500 FT BUFFER, 193 NOTICES

## Notification Map



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