



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

PLANNING AND ZONING BOARD STAFF REPORT

Murphy Oil Modification of Conditional Use with 24-hour Operation

Meeting	File No.	Application Type
February 25, 2019	2019-106	Conditional Use/Modification of Conditional Use

Request

Provide a recommendation to the City Commission regarding a request for a modification of a Conditional Use approval for a Convenience Mart (gas station with food sales) and to include a 24-hour operation. The property is located at 16211 S. Military Trail.

Recommendation

Recommend **approval** to the City Commission for the Conditional Use modification request for a convenience mart for **Murphy Oil**, based upon positive findings with respect to Section 2.4.5(E)(5) (Conditional Use Findings), Chapter 3 (Performance Standards) and Section 4.3.3(J)-Gasoline Stations of the Land Development Regulations, and consistency with the policies of the Comprehensive Plan.

Recommend **approval** to the City Commission for the Conditional Use request for 24-hour Operation for **Murphy Oil**, based upon positive findings with respect to Section 2.4.5(E)(5) (Conditional Use Findings), Chapter 3 (Performance Standards) and Section 4.3.3(VV)-24-hour Operations (Conditional Use Findings) of the Land Development Regulations, and consistency with the policies of the Comprehensive Plan.

Background Information

The subject property is located on the west side of South Military Trail approximately 1,200 feet south of the intersection of South Military Trail and West Linton Boulevard within the Walmart Center Development, Tract C, as shown in Plat book 66, Page 41. The site is approximately 0.83 acres and contains a 210 sf convenience store and a fuel canopy with 8 fuel stations (16 fuels dispensers). There are 2 existing parking spaces. The site was originally developed in 1989 with a City Commission approval for a site and development plan for Walmart that included 114,760 sf retail building and two 0.8 acre out-parcels, one of these being the subject parcel.

Originally zoned as General Commercial (GC), the site was rezoned to Planned Commercial (PC) with the Citywide rezoning associated with the approval of the Land Development Regulations in 1990. The property has a Future Land Use Map (FLUM) designation of General Commercial (GC). PC has a minimum floor area requirement (structure size) of 6,000 sf. In September 2000, the Board of Adjustment approved a variance to reduce the minimum floor area for Tract C to 208 sf. In January 2001 a conditional use for a gas station was approved. In December of 2007, a Conditional Use was granted to Walmart for 24-hour operation. A Conditional Use approval was required as Walmart is within a 300-foot straight line route from a residentially zoned property south of the center. Currently, the existing convenience mart has hours of operation from 5 a.m. to 1 a.m. Although the residentially zoned property abuts the southern property line of the subject parcel, the nearest residence is approximately 625 feet to the southwest.

Project Description

LDR Section 2.4.5(E)(7) allows an approved Conditional Use to be modified. The applicant has submitted a Class V Site Development plan in conjunction with the modification request. The proposed site improvements include the demolition of the existing convenience mart, fuel canopy and 8 fueling stations and the construction of a new 1400 sf convenience mart with 8 fueling stations (16 fueling positions). Required parking and a bicycle rack have also been provided. LDR Section 4.4.12(F) requires any free-standing structure have a minimum floor area of 6,000 sf and access from the interior circulation system of the development. The Applicant is proposing a 1,400 sf convenience mart. As stated previously, the Board of Adjustment approved a variance for the minimum structure size of 208 sf. An approved variance runs with the parcel for which it was granted, therefore an additional request for relief from the minimum structure size is not required. The existing connection to the shopping center will remain in the same location.

The conditional use modification includes a request to operate 24 hours a day, seven days a week. LDR Section 4.3.3(VV)(3), 24 hour Businesses, contains additional regulations for new 24 hour Businesses, including the provision of a conditional use approval if the 24

hour operation is within 300-feet of a residentially zoned property. A security plan is a requirement of the 24 hour business request. Although convenience business is exempt from filing a security plan with the City, a security plan is required to be reviewed during the conditional use process and shall include a detailed description of external lighting, external security measures and internal security measures.

Conditional Use Review and Analysis

REQUIRED FINDINGS: (Chapter 3):

Pursuant to Section 3.1.1 (Required Findings), prior to the approval of development applications, certain findings must be made in a form which is part of the official record. This may be achieved through information on the application, the staff report, or minutes. Findings shall be made by the body which has the authority to approve or deny the development application. These findings relate to the following four areas.

FUTURE LAND USE MAP: The use or structures must be allowed in the zoning district and the zoning district must be consistent with the land use designation).

The subject property has a Future Land Use Map designation of GC, and a zoning designation of PC. PC zoning is consistent with GC FLUM designation. Conditional uses for the PC zoning district include all uses allowed as such within the GC zoning district. Gasoline stations are listed as a Conditional Use in the GC district pursuant LDR Section 4.4.9 (D)(8). 24 hour businesses are listed as a Conditional Use in the PC District per Section 4.4.12(H) and are subject to Section 4.3.3(VV). Therefore, a positive finding with this section can be made.

CONCURRENCY: Facilities which are provided by, or through, the City shall be provided to new development concurrent with issuance of a Certificate of Occupancy. These facilities shall be provided pursuant to levels of service established within the Comprehensive Plan.

The development proposal is to demolish the existing convenience mart and fueling stations associated with the established gasoline station/convenience mart and build a larger convenience mart and replace the existing fueling stations with an equal amount (8 fueling stations). As described in Appendix "A", a positive finding of concurrency for the convenience mart and the 24 hour operation can be made as it relates to applicable standards such as water and sewer, drainage, solid waste and traffic.

CONSISTENCY: Compliance with performance standards set forth in Chapter 3 and required findings in Section 2.4.5(E)(5) for the Conditional Use request shall be the basis upon which a finding of overall consistency is to be made. Other objectives and policies found in the adopted Comprehensive Plan may be used in making a finding of overall consistency.

A review of the objectives and policies of the adopted Comprehensive Plan was conducted and the following applicable objectives and policies were found:

Future Land Use Element - Objective A-1: Property shall be developed or redeveloped in a manner so that the future use and density are appropriate in terms of soil, topographic, and other applicable physical considerations; encourages affordable goods and services; is complimentary to adjacent land uses, and fulfills remaining land use needs.

Murphy Oil is proposing a 1,400 sf convenience mart and fueling area with 8 fueling stations (16 fueling positions). The existing convenience mart is 210 sf with 8 fueling stations. The PC zoning district requires a standalone building to be a minimum of 6,000 square feet. Any expansion of the approved conditional use to obtain this minimum square footage is encouraged. The mart in addition to the canopy is approximately 6,650 sf. This size is consistent with the vision for the PC district, therefore, the site is being redeveloped in a manner appropriate and complementary to the adjacent land uses. The Walmart Center is approved as a 24 hour operation. The request of the applicant to increase the hours of operation to 24 hours will aid in providing fuel purchasing opportunities day and night for those who are utilizing the Walmart or may have overnight or early morning work hours. Therefore, a positive finding with this section can be made.

Transportation Element - Policy A-6.2: The approval of a modification to an existing site development plan and/or conditional use shall be conditioned upon the upgrading of its points of access to meet adopted standards.

Pursuant to LDR Section 6.1.4(C)(1-2), the minimum width of a two way driveway is 24 feet. The convenience mart (gasoline station with food sales) parcel has internal access to the shopping center; therefore, the access point to the shopping center must meet this minimum width. Access from S. Military trail to the center exceeds the minimum required width. Per the "Site Driveway Connection" section of the Traffic Performance Standards (TPS) Analysis, the insignificant change in trips (between 1 and 20 net new peak hour trips in either the AM or PM peak hour), is not anticipated to have any substantial impact on the Walmart driveways. The access is consistent with the Transportation Element of the Comprehensive Plan and associated policies.

Transportation Element - Policy D-2.2: Bicycle parking and facilities shall be required on all new development and redevelopment.

As mentioned in the project description, the site plan includes the installation of a bicycle rack. The provision of a bicycle rack is consistent with the Transportation Element of the Comprehensive Plan and associated policies.

COMPLIANCE WITH LAND DEVELOPMENT REGULATIONS:

Pursuant to Section 4.3.3, Special requirements for specific uses, the following items shall be analyzed:

Convenience Mart

Pursuant LDR Section 4.3.3(J), a gasoline station is any establishment at which the sale and delivery of fuel to a motor vehicle occurs. Gasoline stations are also classified as to other commercial activities which may occur on the site of the establishment.

Pursuant to LDR Section 4.3.3(J)(2), this gasoline station falls under the category of Convenience Mart (gasoline station with food sales), which is defined as a gasoline station which also sells foods and convenience items and does not accommodate repair or installation services and where the sale of food and convenience items is secondary to the use as a gasoline station.

Pursuant LDR Section 4.3.3(J)(5), the following development standards depicted on the table below apply to sites upon which a gasoline station is to be located.

Standard	SERVICE STATION	CONVENIENCE MART
Minimum Lot Area	15,000 Square Feet	15,000 Square Feet
Minimum Frontage	150 Feet	150 Feet
Parking Requirements	4.5 / 1,000 sq. ft. of non-repair gross floor area and 4 spaces per Service Bay or Lift	4.5 / 1,000 Square Feet of Gross Floor Area
Driveways	There shall be no more than two (2) curb-cuts to any abutting street with a minimum distance of twenty-five feet (25') between curb-cuts. Curb-cuts shall not have a width exceeding thirty-five feet (35'), exclusive of transitions. Curb-cuts shall not be located closer than twenty-five feet (25') to the intersection of the ultimate right-of-way lines at a corner nor closer than fifteen feet (15') from any abutting property line or alley.	

The subject parcel has a lot area of 36,132 sf and lot frontage of 203 feet. The convenience mart will have 1,400 sf of gross floor area. Thus, a total of seven (7) parking spaces are required; 8 are proposed. The subject parcel is located interior to the shopping center, therefore, the driveway requirement does not apply in this situation.

Pursuant LDR Section 4.3.3(J)(6), the following standards apply to gasoline stations:

- Gasoline dispensers, tanks, dispenser islands, and canopies shall not be located closer than fifteen feet (15') from any property line. When property directly abuts residentially zoned property, gasoline dispensers, tanks, dispenser islands and canopies, signs, or vents shall not be located closer than 40 feet from the property line abutting the residentially zoned property.

The proposed tanks, canopies and dispensers islands exceed 15 feet from the nearest property line. The tanks are approximately 163 feet from the property line, the canopy is approximately 44 feet from the nearest property line and 55 feet from the residentially zoned adjoining parcel.

- b. All storage tanks shall be underground.

The existing storage tanks will be removed and replaced with new tanks that will be located underground.

- c. Lift and repair facilities shall be located within a structure.

There are no proposed lift and repair facilities for this use.

- d. Vending machines are to be located under roof and screened on three sides. Racks containing cans of lubricating oil may be displayed on service islands. Racks or pedestals used for the display of tires shall be located along any side (as opposed to front) of a structure.

No vending machines or tire sales are proposed and sales of oil will be conducted inside. Propane tank cages and an ice unit are proposed along the north face of the building towards the entrance drive of the Walmart Center. No additional screening is needed as it does not face a public right-of-way.

Parking:

Pursuant to LDR Section 4.3.3(J)(5) convenience marts shall provide 4.5 parking spaces per 1,000 square feet of gross floor area. The applicant is required to provide 7 parking spaces for the proposed 1,400 sf convenience mart, but has provided 8 parking spaces, including one ADA parking space, exceeding the requirement.

24-hour Operation/Businesses

Pursuant LDR Section 4.3.3(VV)(2)(a), any 24-Hour or late night business located or proposed to be located within a 300-foot straight line route from any residentially-zoned property shall obtain a conditional use permit from the City for the operation of such use. The distance shall be measured from the nearest point of the property on which the 24-Hour or late night business is or will be located to the nearest point of a residentially-zoned property. As stated previously, the subject parcel is within 300-feet of a residentially zoned property, therefore, a conditional use has been requested.

REQUIRED FINDINGS: (Conditional Use 24-hour Business-4.3.3.(VV)(2)(c)): In addition to any findings required by Section 2.4.5(E) of the Land Development Regulations, and any other required findings, the following specific findings shall be made in order for any 24-Hour or late night business to be approved for a conditional use:

1. That the use will be consistent with Housing Element A-12.3 of the Comprehensive Plan of the City of Delray Beach. Due to a scrivener's error in the code, "Housing Element A-12.3" should read "Housing Element A-11.3". Policy A-11.3 states that in evaluating proposals for new development or redevelopment, the City shall consider the effect that the proposal will have on the stability of nearby neighborhoods. Factors such as noise, odors, dust, traffic volumes and circulation patterns shall be reviewed in terms of their potential to negatively impact the safety, habitability and stability of residential areas. If it is determined that a proposed development will result in a degradation of any neighborhood, the project shall be modified accordingly or denied.

The convenience mart currently operates from 5 a.m. through 1 a.m. equating to a 20 hour operation. The additional 4 hours of operation will not change peak traffic volume or circulation patterns. As Walmart is already operating 24 hours, it is not anticipated that any additional noise, odors and dust generated with the additional 4 hours of operation will negatively impact the safety, habitability and stability of the residential area. A positive finding can be made.

2. That the submitted security plan contains measures adequate to reasonably protect the safety of patrons, employees and nearby residents.

The submitted Security Plan Narrative contains measures to reasonably protect the safety of patrons, employees and nearby residents. Exterior lighting has been proposed to meet the City of Delray Beach required levels as well as security measures. Per the applicant, all new Murphy sites are equipped with 32 security cameras that are used inside the building as well as around the building and at all building exits. The Murphy building will include a drop safe. Murphy has a well-designed cash handling procedure that keeps a specified low amount of cash in the register drawer. Increases in cash are moved to the drop safe. The building will also be monitored by a silent alarm system, which is continuously monitored at the Murphy Support Services office. A positive finding can be made.

3. That the amount and type of proposed buffering is adequate to minimize the effects of noise impacts upon surrounding uses and nearby residential properties and to act as a visual buffer to the property from surrounding uses and nearby residential properties.

Section 4.6.4(2), Special District Boundary Treatment, requires where the rear or side of commercially zoned property directly abuts residentially zoned property without any division or separation between them, such as a street, alley, railroad, waterway, park, or other public open space, the commercially zoned property shall provide a ten-foot building setback from the property line located adjacent to the residentially zoned property. In addition, either a solid finished masonry wall six feet in height, or a continuous hedge at least four and one-half feet in height at the time of installation, shall be located inside and adjacent to the portion of the boundary line of the commercially zoned property which directly abuts the residentially zoned property. If a wall is used, it shall have only those openings as required by other city codes to meet hurricane or severe storm construction standards. No walkways or other pedestrian ways shall be located through the wall or hedge. The applicant has provided the buffer as required along the southern property line. Additional landscaping such as 12-foot high Dahoon Hollies have been proposed to aid in mitigation of any negative impacts. It is important to note that the subject parcel abuts the residentially zoned property along an open space tract of the residential development. The nearest residence is approximately 625-feet from the site. A positive finding can be made.

SECTION 2.4.5(E) REQUIRED FINDINGS: (Conditional Use)

Pursuant to Section 2.4.5(E)(5) (Findings), in addition to provisions of Chapter 3, the City Commission must make findings that establishing the conditional use will not:

Have a significantly detrimental effect upon the stability of the neighborhood within which it will be located;

Nor that it will hinder development or redevelopment of nearby properties.

The following zoning designations and uses are abutting the subject property:

	<i>Zoning Designation:</i>	<i>Current Use:</i>
<i>North:</i>	Planned Commercial (PC)	Shopping Center (Walmart)
<i>South:</i>	Single Family Residential-PBC (RS)	Country Lake Development
<i>East:</i>	Planned Office Center (POC)	South County Professional Center
<i>West:</i>	Planned Commercial (PC)	Shopping Center(Walmart)

The subject parcel is located at the southeast portion of the shopping center. The existing shopping center borders the north and west property lines of the subject parcel with residential zoning to the south. The existing Walmart is an existing 24 hour of operation facility. The request to increase to 24 hour operation as well as the increase in convenience mart square footage will not have a significantly detrimental effect upon the stability of the neighborhood nor will it hinder the development or redevelopment of nearby properties. Additional landscape buffering as well the existing distance to the nearest residential structure mitigates any detrimental effect upon nearby residential property. A positive finding can be made.

Review By Others

Public Notice:

Formal public notice has been provided to property owners within a 500-foot radius of the subject property. Letters of objection, if any, will be presented at the Planning and Zoning Board meeting.

Assessment and Conclusion

The modification of the conditional use approval includes the demolition of the existing convenience mart and fueling station to construct a larger convenience mart with 8 fueling stations. A request for 24 hour operation has been included. Currently, the business operates 20 hours a day. The improvements include upgrading of the landscaping and parking and internal circulation as well as adding a bike rack. The existing storage tanks will be removed per standard environmental and engineering practices and new tanks meeting current environmental standards will be installed. The Walmart located in the same shopping center in which the convenience mart is located is approved for and utilizes 24 hour operation.

The development proposal, is consistent with Chapter 3 of the Land Development Regulations and the policies of the Comprehensive Plan. Also, positive findings with respect to LDR Sections 2.4.5(E) (5) (Conditional Use Findings), 4.3.3(J) Gasoline stations, and 4.3.3(VV)-24-Hour Operation(Conditional Use Findings), can be made as the proposal will not have an adverse impact on the surrounding area nor will it hinder development or redevelopment of nearby properties.

Alternative Actions

Modification of Conditional Use:

- A. Continue with direction.
- B. Recommend **approval, as amended**, to the City Commission for the Conditional Use modification request for a convenience mart- for **Murphy Oil**, based upon positive findings with respect to Section 2.4.5(E)(5) (Conditional Use Findings), Chapter 3 (Performance Standards) and Section 4.3.3(J)-Gasoline Stations of the Land Development Regulations, and consistency with the policies of the Comprehensive Plan.
- C. Recommend **denial** to the City Commission for the Conditional Use modification request for a convenience mart for **Murphy Oil**, finding that the request is inconsistent with the Comprehensive Plan and does not meet criteria set forth in Sections 2.4.5.(E)(5) (Conditional Use Findings), Chapter 3 (Performance Standards) and Section 4.3.3(J)-Gasoline Stations of the Land Development Regulations.

24-hour Operation Conditional Use:

- A. Continue with direction.
- B. Recommend **approval, as amended**, to the City Commission for the Conditional Use request for 24-hour Operation for **Murphy Oil**, based upon positive findings with respect to Section 2.4.5(E)(5) (Conditional Use Findings), Chapter 3 (Performance Standards) and Section 4.3.3(VV)-24-hour Operations (Conditional Use Findings) of the Land Development Regulations, and consistency with the policies of the Comprehensive Plan.
- C. Recommend **denial** of the City Commission for the Conditional Use request for 24-hour Operation for **Murphy Oil**, finding that the request is inconsistent with the Comprehensive Plan and does not meet criteria set forth in Sections 2.4.5.(E)(5) (Conditional Use Findings), Chapter 3 (Performance Standards) and Section 4.3.3(VV)-24-hour Operations (Conditional Use Findings) of the Land Development Regulations.

Public and Courtesy Notices

N/A Courtesy Notices are not applicable to this request

N/A Courtesy Notices were provided to the following, at least 5 working days prior to the meeting

N/A Public Notices are not required for this request.

X Public Notice was posted at the property on Friday, February 15, 2019, 7 calendar days prior to the meeting. NOTE: The earlier posting was due to a holiday on Monday, February 18, 2019.

X Public Notice was mailed to property owners within a 500' radius on Friday, February 15, 2019, 10 days prior to the meeting.

N/A Public Notice was mailed to the adjacent property owners on (insert date), 20 days prior to the meeting.

N/A Public Notice was published in the Sun Sentinel on Friday, February 15, 2019, 10 calendar days prior to the meeting.

X Public Notice was posted to the City's website on Friday, February 15, 2019, 10 calendar days prior to the meeting.

X Public Notice was posted in the main lobby at City Hall on Friday, February 15, 2019, 10 working days prior to the meeting.

X Agenda was posted on Friday, February 15, 2019, at least 5 working days prior to meeting.

Appendix A-Concurrency

Pursuant to LDR Section 3.1.1(B), Concurrency, as defined pursuant to Objective B-2 of the Land Use Element of the Comprehensive Plan, must be met and a determination made that the public facility needs of the requested land use and/or development application will not exceed the ability of the City to fund and provide, or to require the provision of, needed capital improvements for the following areas:

Water and Sewer:

- Water service is existing on-site via connection to a 2" Water main located within the shopping center.
- Sewer service is existing on-site via connection to a 6" sewer main located within the shopping center.

Pursuant to the Comprehensive Plan, treatment capacity is available at the City's Water Treatment Plant for the City at build-out. Pursuant to the Comprehensive plan, treatment capacity is also available at the South Central County Regional Waste Water Treatment Plant for the City at Build-out.

Streets and Traffic:

The conditional use modification requests the demolition of the existing 210 sf convenience mart and canopy/fueling stations for a proposed 1,400 sf convenience mart and 8 fueling stations. The proposed convenience mart will generate 96 net new daily trips, 10 net new AM Peak Hour trips and 5 net new PM Peak hour trips. Palm Beach County Traffic Performance Standards have been met.

Parks and Recreation Facilities:

Park dedication requirements do not apply for non-residential uses. Thus, the proposed development will not have any impact with respect to this standard.

Solid Waste:

The existing convenience mart generates 3.85 tons of solid waste per year ($210 \times 36.7 = 7,707 / 2,000 = 3.85$). The proposed convenience mart will generate 25.69 tons of solid waste per year ($1,400 \times 36.7 = 51,380 / 2,000 = 25.69$). This equates to a net increase of 21.84 tons of solid waste per year. The Solid Waste Authority has indicated that its facilities have sufficient capacity to accommodate all development proposals until 2046.

Schools:

School concurrency findings do not apply for non-residential uses. Thus, the proposed development will not have any impacts with respect to this standard.

Drainage:

Drainage is accommodated on site via an exfiltration trench system. There should be no impact on drainage as it relates to this standard.