



CITY OF COCOA
Planning & Zoning Board /
Local Planning Agency
City Council Chambers

Cocoa City Hall
65 Stone Street
Cocoa, FL 32922

AGENDA
Regular Meeting
January 13, 2016
6:00 p.m.

I. OPENING MATTERS:

1. CALL TO ORDER
2. ROLL CALL

II. APPROVAL OF AGENDA AND MINUTES:

1. AGENDA: Regular Meeting of January 13, 2016
2. MINUTES: Regular Meeting of October 14, 2015

III. OTHER BUSINESS:

Election of Board Chair and Vice-Chair

IV. OLD BUSINESS:

None

V. NEW BUSINESS:

A. PZ-15-00200008 – LARGE-SCALE SITE PLAN – CLEARLAKE ISLES **TABLED**

Request by Clearlake Isles, LP for approval of a large-scale site plan consistent with Appendix A, Zoning, Article XIII, Section 1 to construct two (2), three (3)-story buildings with a total of 84 units for senior living and associated amenities, such as swimming pool and cabana. The property is located on the east side of Clearlake Road, approximately 250 feet south of the Clearlake Rd./University Blvd. intersection and is identified by the Brevard County Property Appraiser's Office as Parcel ID No. 24-36-20-00-00258.0-0000.00.

B. APPEAL ZONING CODE INTERPRETATION OF COMMUNITY SERVICES DIRECTOR

In accordance with City of Cocoa Code, Art. XIII, Sec. 1, (H)(1), the Applicant's (PNG Properties, LLC) representative is requesting appeal to the Planning & Zoning Board of a zoning interpretation made by the Community Services Director of the City of Cocoa.

VI. NEXT MEETING DATE:

February 10, 2016

VII. ADJOURNMENT:

(Over)



NOTICE TO PUBLIC:

This meeting may include the attendance of one (1) or more members of the Cocoa City Council who may or may not participate in the Board discussions held at this public hearing.

All persons and parties are hereby advised that if they should decide to appeal any decision made by this Board with respect to any matter considered at this hearing, they will need a record of the proceedings and that for such purpose, affected persons may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

The facility where this public hearing will be held is accessible to the physically handicapped. Interested parties are hereby advised that they may appear at said meeting and be heard with respect to the application. Written comment from the public with regard to the application will also be accepted.

Information pertaining to the above may be inspected at the Planning & Zoning Division at 65 Stone Street, Cocoa, Florida between 8:00 a.m. and 5:00 p.m., Monday through Friday, beginning the Friday before the Board Meeting date, or by phoning (321) 433-8535.

CITY OF COCOA
PLANNING & ZONING BOARD
MEETING MINUTES
OCTOBER 14, 2015

A regular meeting of the Planning & Zoning Board of the City of Cocoa was held on Wednesday, October 14, 2015, in the Council Chambers located at 65 Stone Street, Cocoa, as publicly noticed.

OPENING MATTERS:

Chairman Michael Dobrin called the meeting to order at 6:00 P.M. The Board Secretary called the roll.

MEMBERS PRESENT:

Michael Dobrin	Chairman
Al Washington	Vice-Chairman
Todd Anderson	Board Member
Betty Lee	Board Member
Jack Moore	Board Member
Russell Sengel	Board Member
Bill Terrell	Board Member
Jake Williams Jr.	Board Member

OTHERS PRESENT:

Steve Belden, AICP	Community Services Director
Steven Biel	Senior Planner
Kim Kopp (via phone)	Board Attorney
Joy Lombardi	Recording Secretary

APPROVAL OF AGENDA & MINUTES:

1. Approval of Agenda: October 14, 2015.

Motion by Mr. Terrell, seconded by Mr. Dobrin, to approve the agenda of October 14, 2015. Vote on the motion carried unanimously.

2. Approval of Meeting Minutes: September 9, 2015.

Motion by Mr. Terrell, seconded by Mr. Washington, to approve the minutes of September 9, 2015, as written. Vote on the motion carried unanimously.

OLD BUSINESS:

None

NEW BUSINESS:

A. PZ-15-00100003 PRELIMINARY SUBDIVISION - CLEARLAKE ISLES

Senior Planner Steven Biel presented Exhibits for the Boards review. Mr. Biel stated that the applicant is requesting approval of a Preliminary Subdivision in accordance with Chapter 18 of the City of Cocoa Code in order to subdivide one (1) 9.64-acre parcel into two (2) lots. The property is located on the east side of Clearlake Road, approximately 250 feet south of the Clearlake Rd./University Blvd. intersection and is identified by the Brevard County Property Appraiser's Office as Parcel ID No. 24-36-20-00-00258.0-0000.00.

Mr. Biel explained the developer of the property, Clearlake Isles, LP, is requesting approval for the 2-lot subdivision in order to construct an apartment complex for senior living with approximately 85 attached units with associated amenities, such as a swimming pool area, on Lot 2.

Staff finds that the proposed Clearlake Isles Preliminary Subdivision Plat is substantially consistent with the requirements of the City of Cocoa Code and with the City of Cocoa Comprehensive Plan; therefore, staff recommends the Planning & Zoning Board recommend to City Council approval of the Preliminary Subdivision Plat, with the following condition:

Any unresolved review comments from City of Cocoa staff shall be addressed prior to Final Plat approval by City Council.

David Petroni, of DFP Enterprises LLC, provided an overview of the proposed project to construct an 84 unit apartment complex for senior living with amenities. Mr. Petroni stated that they will be rezoning Lot 1 to a commercial zoning designation to provide services to the residents and to be consistent with the City's comprehensive plan.

Motion by Mr. Washington, seconded by Mr. Terrell, to recommend approval to City Council of the Preliminary Subdivision Plat. Vote on the motion carried unanimously.

OTHER BUSINESS:

None

NEXT MEETING DATE:

The Board members established that the next meeting of the Planning & Zoning Board would be established as needed due to the fact that the next scheduled meeting would be Veteran's Day.

ADJOURNMENT:

There being no further business the meeting adjourned at 6:17 pm.

Approved on this ____ day of _____, 2015.

Mike Dobrin, Chairman

Joy Lombardi, Recording Secretary



**City of Cocoa
Planning & Zoning Board**

STAFF REPORT

Date:	January 6, 2015
Project Name:	Notice of Appeal Re: Proposed Use Set Forth in Site Plan Application
Meeting Date:	January 13, 2016
Property Owner:	Home Depot USA, Inc ATTN: Property tax Dept. B-12 P.O. Box 105842 Atlanta, Georgia 30348-5842
Applicant:	PNG Properties, LLC John Bona P.O. Box 643864 Vero Beach, Florida 32964
Applicant Representative:	Kimberly Bonder Rezenka Dean Mead 7380 Murrell Rd., Suite 200 Viera, Florida 32940
Requested Action:	APPEAL OF COMMUNITY SERVICES DIRECTOR'S DETERMINATION THAT PROPOSED USE SET FORTH IN SITE PLAN IS NOT PERMITTED IN C-G ZONING DISTRICT

BACKGROUND

In accordance with City of Cocoa Code, Art. XIII, Sec. 1, (H)(1), the Applicant's representative is requesting appeal to the Planning & Zoning Board of a decision made by the Community Services Director regarding the proposed use set forth in the Applicant's site plan application. The Notice of Appeal was submitted to the City Clerk's office on December 15, 2015, and is attached hereto.

On August 12, 2105, the Applicant, PNG Properties, LLC, met with members of the Community Services Department, to include the Community Services Director, Economic Development Manager, and the Senior Planner, regarding a proposed project located at the old Winn Dixie site (now owned by The Home Depot). The discussion was preliminary and conceptual in nature and a concept plan was submitted at that time. During the meeting it was initially determined that the proposed use, described as a parking facility, is a permitted use in the C-G (General Commercial) zoning district;

specifically, Sec. 12 (A) Principal Uses and Structures, (9) Storage garage, public and private automobile parking.

On October 20, 2015, a formal Site Plan application was submitted for the proposed use. The site plan indicated several "storage lots" in the site. Additionally, the Site Plan Application form indicated under Sec. 6. Property Information that the proposed use was "Transportation Depot." Further, according to Ms. Rezanka, this appeal "stems from the Company's submittal of a concept plan and two versions of a Minor Site Plan, seeking approval from the City of Cocoa of a Site Plan to operate a **parking and transportation facility** for cruise passengers traveling to Port Canaveral."

There are two issues to be resolved with this Appeal. The first issue is how to classify the proposed use (i.e., is it a parking facility, storage facility, or transportation facility). All three references have been used interchangeably by the applicant. The second issue is whether the various plans and proposals submitted by the applicant contain a use that is permitted in the C-G zoning district. This issue necessitates examination of applicable provisions of City Code.

Use Determination

The original site plan, dated September 30, 2015, indicated on the cover sheet under the General Statement the following: "Converts existing commercial site & building into short term vehicle storage. Install landscaping & new vehicle barriers to accommodate new use." Site Plan page C-3 labeled several areas as "Storage Lot". Furthermore, contained in the Site Plan Application form under sec. 6 Property Information, Proposed Use on Property – it states "**Transportation Depot.**"

The resubmitted site plan dated November 17, 2015 modified the language under the General Statement section from short term vehicle storage to vehicle parking and changed the site plan labels to "Parking Lot".

Finally, the appeal letter received from attorney Kim Rezanka on December 15, 2015, second paragraph states "This Appeal stems from the Company's submittal of a concept plan and two versions of a Minor Site Plan, seeking approval from the City of Cocoa of a Site Plan to operate a **parking and transportation facility** for cruise passengers traveling to Port Canaveral."

It should be noted that Sec. 19 of the City Code, provides that the M-2 Industrial district allows "Transportation facilities, passenger and/or freight" as a principal permitted use. In fact, there is currently a cruise passenger parking/transportation facility located in the M-2 in the Grissom Industrial Park. Transportation facilities, passenger and/or freight, are only permitted in the M-2 zoning district due to their intensity and potential high traffic volume.

The proposed use is a park and go lot for the Port Canaveral cruise passengers. The operation is such that cruise passengers will drive to the proposed facility and pull up to a drop off point where they will exit their vehicle and the vehicle will be driven to a location on the lot by an employee of the facility. The passengers will be shuttled to the Port and then on their return from the cruise will be shuttled back to the facility to pick up their vehicle. This is not a typical parking lot use where individuals park their vehicle and walk to a use nearby and then return to their vehicle. The only

purpose of the facility is to shuttle cruise passengers back and forth, similar to the above-referenced existing use permitted in the Grissom Industrial Park located in the M-2 (Industrial) zoning district.

It is staff opinion that the proposed use, as stated by the applicant and applicant's attorney representative, is a transportation facility. Such transportation facilities are not authorized in the C-G zoning district.

Proposed Use and C-G Zoning District

In the C-G (General Commercial) zoning district, "Storage garage, public and private automobile parking" is a permitted use. Upon review of the City Code, staff determined that this permitted parking use is dependent upon there being a storage garage. The zoning code uses a variety of wording to address "parking" in other zoning districts as described below:

Sec. 9 R-P Residential Professional, "Parking facilities, provided that a suitable landscape plan is approved and maintained" is permitted as a Special Exception;

Sec. 12 C-G General Commercial, "Storage garage, public and private automobile parking" is a permitted use;

Sec. 13 CBD Central Business District, "Parking lots and garages, public or private" is allowed as a Special Exception; and

Sec. 18 C-C Core Commercial, "Public and private automobile parking" is a permitted use.

Additionally, Sec. 19 M-2 Industrial, allows as a permitted use "Transportation facilities, passenger and/or freight."

Each zoning district uses slightly different, but similar language, to describe the type of parking and facilities permitted because the intended permitted use in each district is different. Additionally, to demonstrate that public and private automobile parking is only allowed within a storage garage in the C-G zoning, it is helpful to look at a different use which uses similar language structure. Under the C-G zoning, (14) Package store, beer and wine; the package store use is allowed but is restricted to beer and wine only. This is consistent with the interpretation that public and private automobile parking is permitted only within a storage garage.

To address the specific use interpretation in question, there is a clear distinction that should be noted between Sec. 18 C-C, where "Public and private automobile parking" is allowed as a permitted use without the requirement to be contained within a storage garage, whereas in the C-G zoning district "Storage garage, public and private automobile parking" does require automobile parking to be contained within a storage garage. Also, the storage garage use in C-G is specifically restricted to automobile parking only and would not allow for the storage of other types of vehicles or machinery such as boats, recreational vehicles or construction equipment. Additionally, the CBD zoning district allows for both parking lots and garages, further supporting the interpretation that the language in the C-G zoning district is a requirement that the automobile parking be contained in a storage garage.

It should also be noted that this is the first time a use of this nature has been proposed in a commercial zoning district.

Recommendation

Staff recommends the Planning & Zoning Board agree with the Community Services Director's determination that the proposed use set forth in the Applicant's site plan is for a transportation facility and not for a "storage garage, public and private automobile parking", and therefore, is not specifically authorized in the C-G zoning district.



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Orlando
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Viera/Melbourne

KIMBERLY B. REZANKA
(321) 751-6103
KRezanka@deanmead.com

December 15, 2015

Sent via email: cshealy@cocoafl.org

Ms. Carie Shealy
City Clerk, City of Cocoa
65 Stone St.
Cocoa, FL 32922

Re: NOTICE OF APPEAL TO PLANNING & ZONING BOARD
November 21, 2015 Interpretation by Community Development Director
Proposed Use at 2320 Highway 524, within C-G Zoning District

Dear Ms. Shealy:

On behalf of PNG Properties, LLC (the "Company"), the buyer working with Home Depot USA, Inc. regarding the above-reference Property, we are filing this Notice of Appeal regarding the November 21, 2015 Interpretation of the Community Development, pursuant to City of Cocoa Code of Ordinances ("City Code"), Art. XIII, Sec. 1, (H)(1). The interpretation to be appeal in contained in the email attached hereto as **Exhibit "A"**.

This Appeal stems from the Company's submittal of a concept plan and two versions of a Minor Site Plan, seeking approval from the City of Cocoa ("City") of a Site Plan to operate a parking and transportation facility for cruise passengers traveling to Port Canaveral. Initial meetings between the Company with the City's Community Development Director, Economic Development Director and Senior Planner Steven Biel resulted in the opinion from City that the proposed use was a principal use in General Commercial District (C-G). The Company believed this opinion to be based upon concept plan submitted to the City on August 12, 2015, a copy of the concept plan is attached hereto as **Exhibit "B"**. Upon the City's direction that only a Minor Site Plan was required, the Company submitted a Minor Site Plan for the parking facility on October 20, 2015. The first submittal is attached hereto as **Exhibit "C"**. Senior Planner Biel provided written comments dated November 3, 2015, indicating that a Special Exception would be needed for the parking facility. Stunned, the Company sought guidance from the City Manager and City Attorney. In the interim, the Company submitted a revised Site Plan to

indicate that no "storage" was intended at the parking facility, only parking was planned to occur at the facility. The second submittal is attached hereto as Exhibit "D".

The Company believes that the G-C (C-G) allows "private automobile parking" as a principal use. The City disagrees and has claimed that such parking is only a principal use in a "storage garage". The applicable code section is below.

Sec. 12. - District and intent—C-G, General Commercial District.

The provisions of this district are intended to apply to an area intended to be developed and preserved as a major commercial center serving the commercial needs of the community and region. The type of uses and other restrictions are intended to promote adequate protection from conflicts with adjacent residential and other noncommercial uses, and to minimize the interruption of traffic along adjacent thoroughfares.

(A) PRINCIPAL USES AND STRUCTURES. The following uses and structures are permitted for any use or group of uses that are developed, either separately, or as a unit with certain site improvements shared in common:

- (1) All principal uses and structures allowed in section 10, P-S Professional Services District, and section 11, C-N, Neighborhood Commercial District, except residential uses and child care centers, day nurseries or kindergartens.
- (2) Any other retail sales outlet of products sold directly to the consumer.
- (3) Wholesaling from sample stocks.
- (4) Dry cleaning establishments using nonflammable solvents and cleaning fluids as determined by the fire chief.
- (5) Business service establishments.
- (6) Commercial recreation structures such as theaters, driving ranges, bowling alleys, and similar uses except drive-in theaters (enclosed structures shall be air conditioned).
- (7) Automobile laundry or quick wash.
- (8) Liquor stores (retail) and cocktail lounges.
- (9) Storage garage, public and private automobile parking.
- (10) Repair service establishments such as household appliances, radio and television and similar uses.

Despite the Company's best efforts to resolve this interpretation issue of whether Sec. 12(A)(9) provide three (3) principal uses or one principal use, the City is demanding that the Company apply for a Special Exception for the parking facility. The Company believes that three principal uses clearly exist in that section based upon the plain meaning of the words "storage" and "parking", and based upon the pattern and word usage in this City Code section and other Code sections.

The City Code defines "park" or "parking" as "the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers. . .". Sec. 20-51(k). There is also a definition for "public parking space", which includes parking spaces on private property for use by members of the public. Sec. 20-51(o). However, no definition for "storage" or "storage garage" could be found in the City Code. The Merriam-Webster on-line dictionary defines "storage" as "space or place for storing, the safekeeping of goods in a depository (as a warehouse)".

One Florida case has examined the difference between "storage" and "parking", finding that one has more a degree of permanency than the other. In *Castro v. Miami-Dade County Code*

Ms. Carie Shealy
December 15, 2015
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Enforcement, the Court turned to the American Heritage Dictionary (1979) for the definition of "store", defined as "to reserve or put away for future use," while "storage" is defined as "the act of storing goods, as in a warehouse for safekeeping." Therefore, the court reasoned, the county code contemplated a placing away of boats for a considerable period, and not for a brief placement. *See id.*, 844 So. 2d 784, 785 (Fla. 3d DCA 2003). The court stated that its conclusion was reinforced by the Second District Court's opinion in *International Ins. Co. v. Mason*, 442 So.2d 379 (Fla. 2d DCA 1983), that "stored" and "storage" contemplate a certain degree of permanency. *See id.* "*International* cites as persuasive *State v. Breidenbach*, 5 Ohio App. 2d 52, 213 N.E.2d 745 (1964) and *Williams v. Grier*, 196 Ga. 327, 26 S.E.2d 698 (1943). In *Breidenbach* the Ohio Court of Appeals, in reviewing a county zoning resolution, stated (at 746) "we observe in passing that storage of automobiles indicates a certain degree of permanency, while the term 'parking' connotes transience." In *Williams v. Grier*, the Georgia Supreme Court concluded that "parking" does not equate to "storing". An earlier Florida case similarly reviewed other jurisdictions to come to the same conclusion. "Other jurisdictions which have considered the issue seem to have decided that "stored" or "storage" denotes a certain degree of permanency." *Int'l Ins. Co. v. Mason*, 442 So. 2d 379, 380 (Fla. 2d DCA 1983).

In addition, at no time prior to November 3, 2015 letter from Mr. Biel did the City Staff ever indicate that a Special Exception was even remotely a requirements. In meetings between the Company and City staff on August 11th and 12th, regarding the proposed facility, the language regarding zoning for parking in this location was reviewed at length. Steven Biel, Senior Planner reviewed the zoning and told the Company representatives that the site was zoned for parking. The Company generated a concept sketch for the property and provided it to the City on August 12th. The Company representatives reviewed the concept sketch with Steven Biel, Steven Belden and Joani Junkala, and although Steven Belden seemed adverse to the concept plan, City staff reiterated again that the zoning supported parking and there was "nothing to be done to prevent parking."

Now, the City has found a way "to prevent parking", a principal use is G-C. The Company relied upon the City staff and has spent substantial funds preparing for the operation of the parking facility. The Company's relationship with Home Depot USA, Inc. is in jeopardy if the City demands an application for a Special Exception.

On behalf of PNG Properties, LLC, we respectfully request that the Planning & Zoning Board overturn the interpretation of the Community Development Director. To require the Company to submit a Special Exception Application under the vague and ambiguous standard of "any other use in keeping with the intent of the district" could prove to be a useless exercise and will only delay the Company further.

Sincerely,

Kimberly B. Rezanka

KBR:bms
enclosures

copy to: City Manager (via email)
City Attorney, Anthony Garganese (via email)
John Bona

Kim Rezanka

From: John Titkanich <jtitkanich@cocoafl.org>
Sent: Saturday, November 21, 2015 9:53 AM
To: Kim Rezanka; Anthony Garganese (OrlandoLaw)
Cc: Steven Belden
Subject: RE: Vacant Home Depot property/Park N Go

Kim:

First, I apologize as both Anthony and I were unaware that a concept plan was provided by your client the day after the August 11th meeting. After conferring with my staff this morning, our Economic Development Manager did have a copy of the concept plan you emailed yesterday evening. The original concept plan appeared to denote a proposed indoor/outdoor public parking project.

I understand that during the pre-application process there may have been some confusion as to whether the proposed project would constitute a permitted use on the subject property under the current C-G zoning designation. However, after City staff received and preliminarily evaluated the actual site plan application submitted by your client, including several variations of the proposed site plan denoting the project as a "Transportation Depot" and "Storage Lots," the Community Development Director has determined that the proposed use is not permitted on the subject property under the current C-G zoning designation because the proposed use does not fall within the permitted use of "Storage Garage, public and private automobile parking." In other words, a public and private automobile parking project is allowed provided the parking is in a storage garage. The proposed outdoor parking facility will require approval of a special exception by the Board of Adjustment under the listed special exception use of "Any other use keeping with the intent of the district."

Under the circumstances, the City is still willing to complete a full site plan review. However, as we discussed yesterday, your client will need to submit additional technical information that is required by the City Code including a traffic impact analysis. Once all the technical information has been submitted, the Community Development Director will make a final determination on the entire application, which is subject to appeal to the Planning & Zoning Board pursuant to the City Code. Alternatively, at this stage of the site plan review process, your client can elect to immediately appeal the Community Development Director's determination that the proposed project is not a permitted use to the Planning & Zoning Board. Under the second option, if the Planning and Zoning Board upheld your appeal, the City will immediately resume the full site plan review based on the Planning & Zoning Board's decision. The City is affording your client the right to have an immediate appeal of the land use determination as a way to minimize the costs that may be required to finalize a full site plan review and determination in the event the Community Development Director's land use determination is upheld by the Planning & Zoning Board. Either way, your client is being afforded the right to present their application to the Planning & Zoning Board for a final determination.

Please consult with your client and advise the City as to how your client wishes the City to proceed with the application. The City will wait to hear back from you before taking any additional steps regarding the pending application. If your client wishes to file an appeal now, submit a written request to appeal to the city clerk, with a copy to me, within thirty (30) days of receiving this email pursuant to Appendix A- Zoning, Article XIII, Section 1 (H). Additionally, the City returned the application fee payment (check) submitted with the site plan application as it was more than required fee, \$500 vs. \$350. Please have your client resubmit the site plan application fee in the proper amount of \$350.

If you have any questions or concerns, please do not hesitate to contact me or Anthony.

Regards,

EXHIBIT "A"

John



**John A. Titkanich, Jr.,
AICP**

City Manager

65 Stone St., Cocoa, FL 32922

(321) 433-8686 | jtitkanich@cocoafl.org

Fax: (321) 433-8690

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From: Kim Rezanka [mailto:KRezanka@deanmead.com]

Sent: Wednesday, November 18, 2015 6:20 PM

To: John Titkanich; Anthony Garganese (OrlandoLaw)

Cc: Steven Belden

Subject: FW: Vacant Home Depot property/Park N Go

John and Anthony,

Contrary to what was stated today, my clients did indeed share a conceptual site plan (copy attached) with your staff and left a copy. Your staff knew exactly what my client was intending to do and advised them it was a permitted use. It was not a "survey" that was given to your staff.

I again spoke with my client and the representatives are not inclined to submit for a special exception.

We again ask you reconsider your staff interpretation and deem a parking lot a permitted use, without a "garage" for "storage". If you will not reconsider, please provide a denial to the site plan so we may challenge either to Planning and Zoning (Art. XIII, Sec. 1(H)) or Circuit Court.

Thank you for your consideration.

Sincerely,
Kim Rezanka



Kimberly Bonder Rezanka
Shareholder
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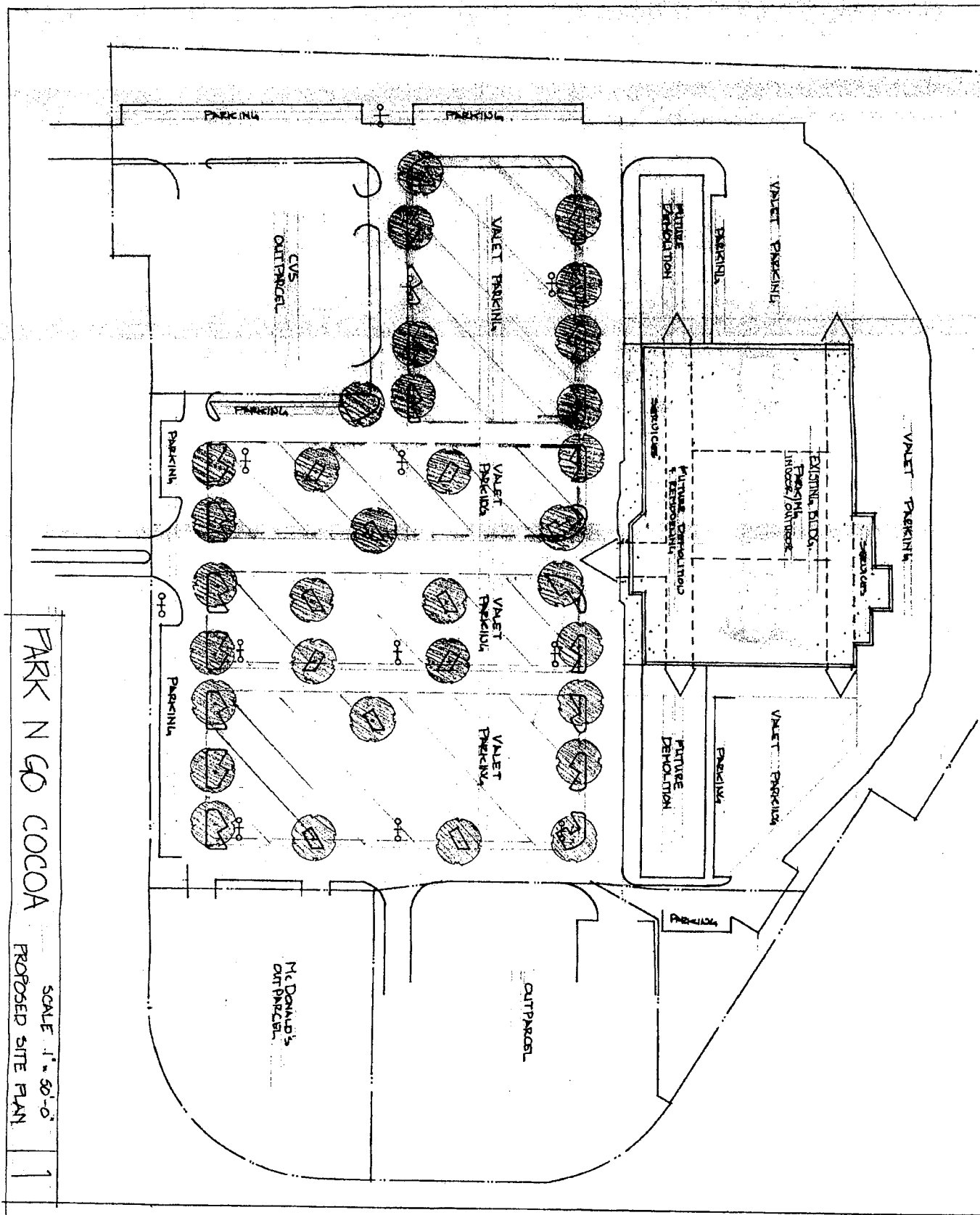


EXHIBIT "B"

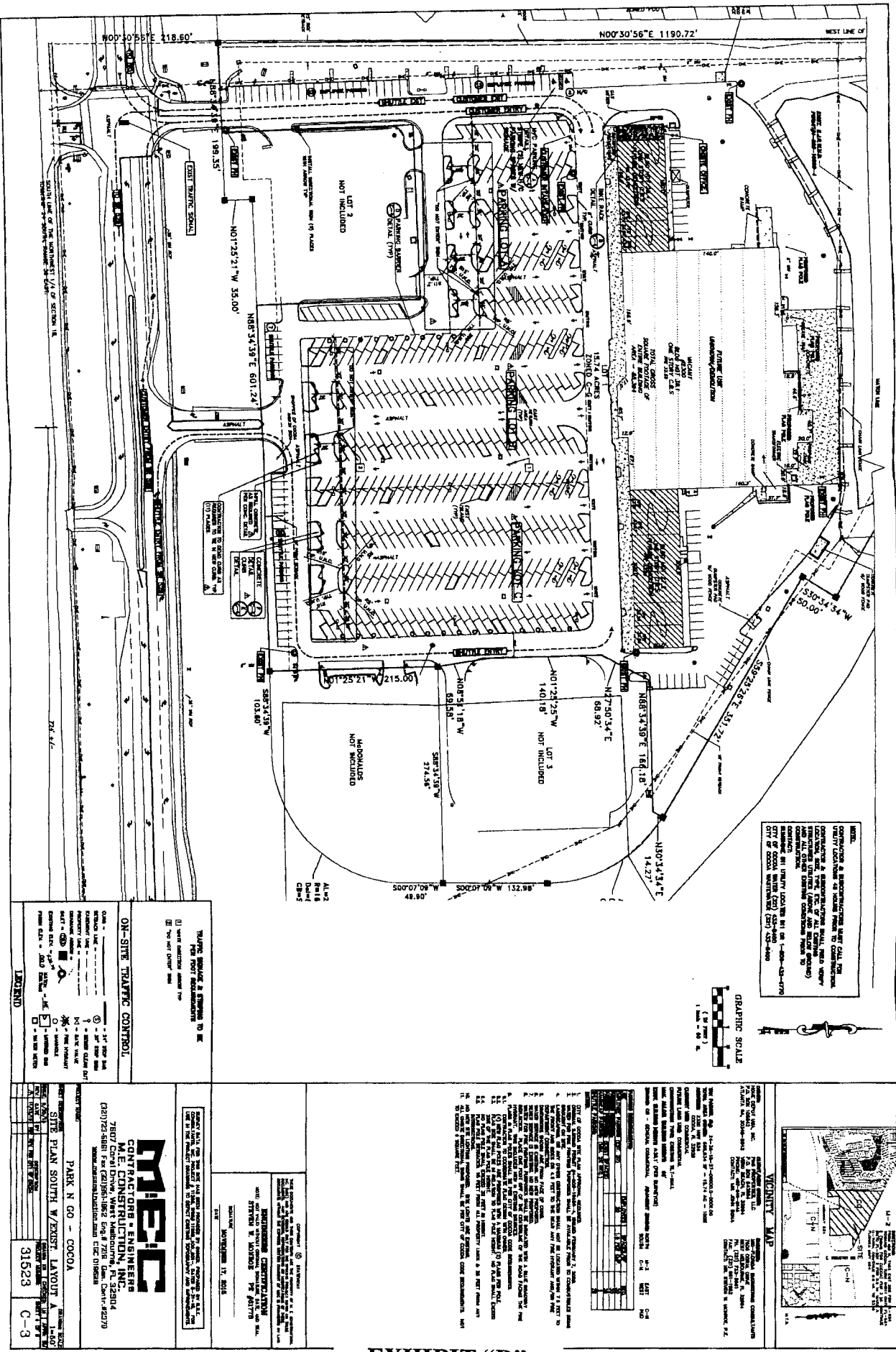


EXHIBIT "D"

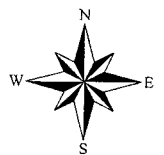


Location Map Home Depot USA, Inc. Property



Legend

-  Subject Property
-  Water Bodies
-  Publish.GISDL.CityBoundary



0 0.1 0.2 Miles

Disclaimer: Maps are for reference purposes only and do not replace official documents.

