



**DEVELOPMENT SERVICES DEPARTMENT  
STAFF REPORT**

**Project Name:** Panda Express

**Applicant:** Matthew H. Scott, Esquire, agent for Panda Express, Joe Celento

**Project Location:** 5681 West Atlantic Boulevard

**DRC #:** 26-00400012

**Application Type:** Variance

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**I. RECOMMENDATION:**

**APPROVAL**

**II. SUMMARY:**

Joe Celento, Panda Express (“Applicant”) has submitted a variance application associated with an application for site plan approval for a 3,381 sq. ft. restaurant with drive-through by renovating the former Boston Market site. The renovation costs represent substantial redevelopment, therefore the project must comply with all applicable land development regulations. The applicant is modifying the site to comply with some of the regulations and is requesting relief from the sections of the Margate Unified Land Development Code (ULDC) in order to allow some existing site features to remain unchanged. Staff recommends approval.

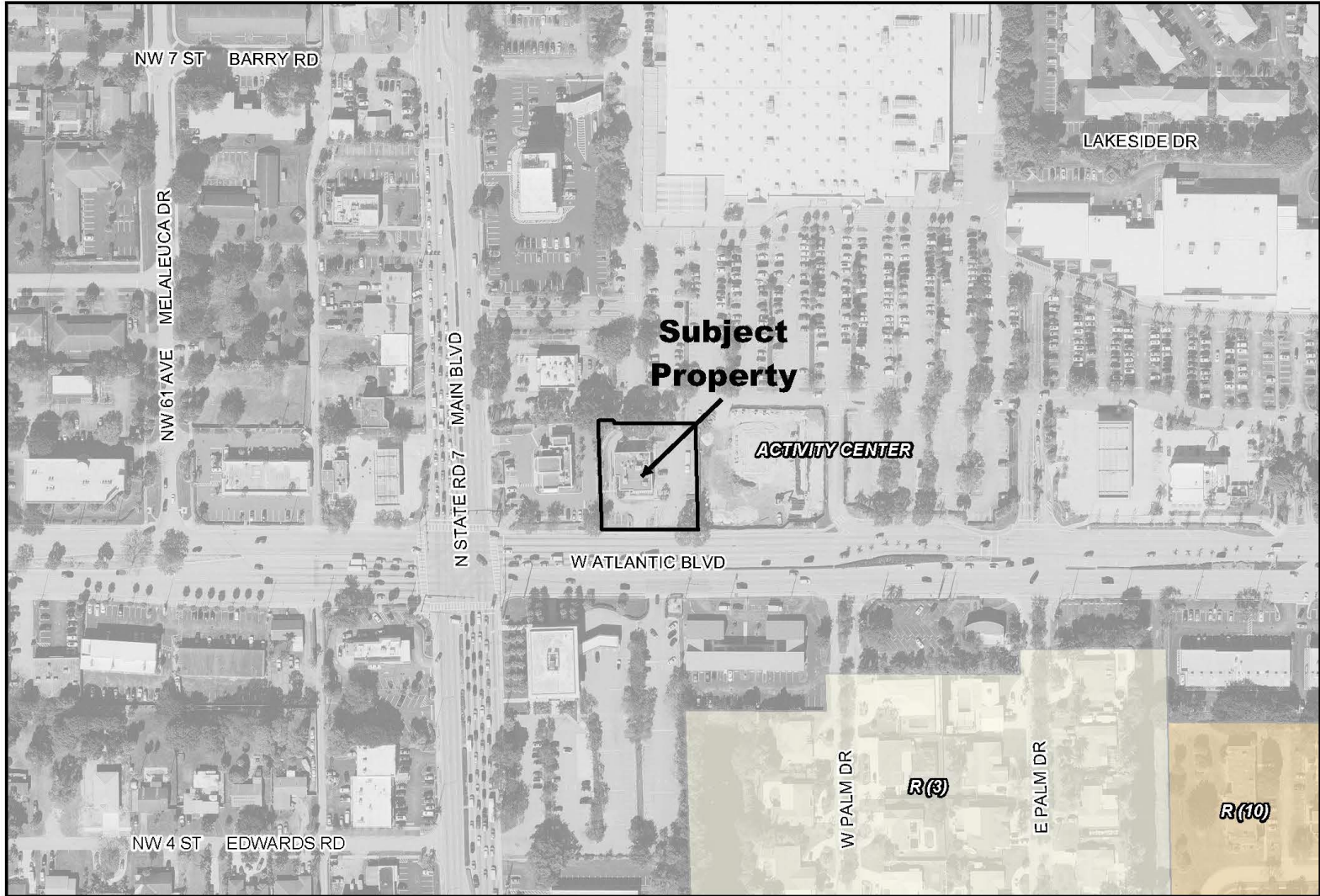
**III. ANALYSIS:**

**Background**

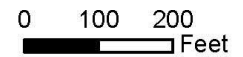
The subject property is generally located on the north side of Atlantic Boulevard 175’ east of State Road 7. It is zoned Gateway with a Future Land Use designation of Activity Center, within both the Margate Community Redevelopment Area and Central Business District boundaries. The parcel is 26,465 square feet (0.61 acres) and part of the Margate Realty No. 1 Shopping Center plat as recorded in Plat Book 42, Page 42 of the public records of Broward County, Florida, identified with folio number 4841 36 06 0017.

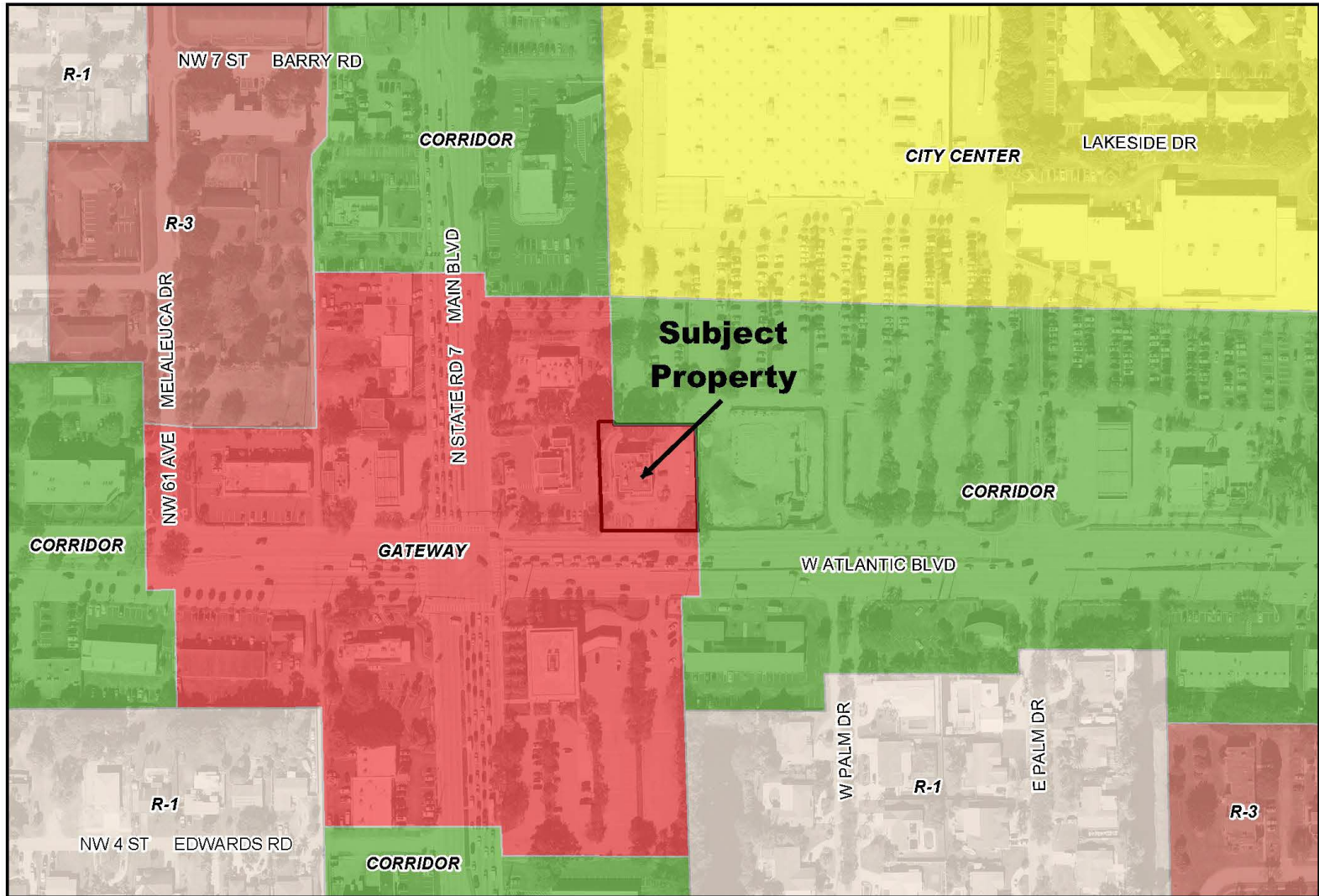
The table below identifies the surrounding properties:

<b><u>DIRECTION</u></b>	<b><u>USE</u></b>	<b><u>FUTURE LAND USE</u></b>	<b><u>ZONING</u></b>
North	Burger King & Walmart	Activity Center	Gateway, Corridor
South	Wells Fargo Bank	Activity Center	Gateway
East	TD Bank	Activity Center	Corridor
West	Chipotle Restaurant	Activity Center	Gateway

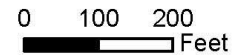


**5681 W ATLANTIC BLVD: LANDUSE**





### 5681 W ATLANTIC BLVD: ZONING



## History

December 15<sup>th</sup>, 1993, the City Commission granted approval of a Special Exception for a restaurant with a drive-through on the property.

## ULDC Requirements

§40.552(B) ...the building design and site design standards and any and all other land use and development requirements, standards, regulations, or other provisions set forth in this article shall apply to all new development and redevelopment within these districts.

§40.201(C) *Substantially redevelop or reconstruct*. The cost of the proposed improvement, rebuilding, repair or reconstruction will be 75 percent of the value of the building(s) or structures(s) as determined by the Broward County Property Appraiser for that calendar year.

§40.554(F) Requires the construction of an 18' wide Urban Greenway consisting of a 10' multi-modal path and eight (8)' landscape strip.

§40.704(G)1 Requires 5' perimeter landscape strips on the property lines.

§40.704(H)1 and 2 Requires terminal landscape islands to be 11' wide and a pedestrian zone around the building consisting of an eight (8)' sidewalk and four (4)' landscape strip.

## Applicant's Request

The applicant submitted a site plan application to the Development Review Committee (DRC) to renovate the existing restaurant with a drive-through because the renovation costs represent redevelopment and when this occurs the ULDC requires compliance with all current regulations.

If all of the current requirements were applied, some of the building would have to be demolished and / or a row of parking, drive-through, and parking spaces would be eliminated. The applicant is proposing to modify the site to comply with the current ULDC requirements in areas it is possible to do so without compromising the building, drive-through or parking lot.

Three (3) terminal landscape islands, pedestrian zone at the front of the building, north and south perimeter landscape buffers are being provided; the variance requests represent the areas of the property where modifications would compromise the site.

1. **FROM:** §40.554(F) which requires the construction of an 18' wide Urban Greenway consisting of a 10' multi-modal path and eight (8)' landscape strip, **TO:** allow the five (5)' existing sidewalk and three (3)' landscape strip remain unchanged;
2. **FROM:** §40.704(H)1 and 2 which require terminal landscape islands to be 11' wide and a pedestrian zone around the building consisting of an eight (8)' sidewalk and four (4)' landscape strip, **TO:** allow two (2) terminal landscape islands of 5.89' and 7.9' wide at the row adjacent to the building and a pedestrian zone on the east side of the building with 3.94' landscaped area

and five (5)' sidewalk, and on the west side of the building no landscape area with the existing 6.32' sidewalk to remain unchanged; and

3. **FROM:** §40.704(G)1 which requires 5' perimeter landscape strips on the property lines, **TO:** allow the 2.41' landscape strip on the west side and 1.19' on the east side to remain unchanged.

### **Findings**

In order for the Board of Adjustment to make a determination on whether to approve or deny a variance application, the Board is required to make a determination based on substantial competent evidence weighed against the criteria listed below; staff's findings are indicated in ***bold italics***.

§40.323. – Board of Adjustment.

(E) *Powers and duties.*

2. *In exercising said powers and duties, they shall not grant a variance unless:*

- a. It shall be demonstrated that special conditions and circumstances exist which, if there is a literal and strict enforcement of the provisions of a zoning ordinance, would constitute a hardship or practical difficulty in the use of the property involved.

***The property was developed before the City's redevelopment plan was adopted under a different set of standards, and while the plan and regulations were created to encourage redevelopment, there are instances such as this when requiring them to be met would eliminate the ability to use the property as it was developed and preclude a substantial investment to continue using it.***

- b. Owner's preference or economic disadvantage does not constitute a hardship. A self-created hardship does not constitute grounds for a variance.

***The hardship is not merely an economic disadvantage and is not the owner's preference, applying all of the ULDC standards would render the site unusable for the use in which it is approved to have.***

- c. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted use of lands structures or buildings in other districts shall be considered grounds for a variance.

***The use of the property is conforming and no other properties are being considered as justification for these requests.***

- d. It shall be demonstrated that special conditions and circumstances exist which are peculiar to the land or structure involved, and which are not applicable to other land or structures located in the same district.

***This site is constrained between developed properties that are in good condition with little to no prospects for redeveloping them, compliance with all of the current Code requirements would render the site unusable for the use in which it is approved to have.***

e. The Board shall find that the granting of the variance will not be contrary to the public interest or the general purpose sought to be accomplished by the zoning ordinances, is the minimum variance possible to make reasonable use of the land or structure, and shall not constitute that granting of a special privilege. In granting a variance, the Board may prescribe appropriate safeguards and conditions in conformity with the intent of the Code.

***One of the purposes of the ULDC is conserving the value of land, buildings and resources. Granting the variances accomplishes this by allowing a structure with substantial value to be renovated and site to continue to be used. The applicant is proposing to modify the site in every area that it is possible to comply with the current requirements of the ULDC without compromising the site's functionality which represents the minimum variances needed to have reasonable use of the property for the use in which it has been approved. No additional conditions are recommended, what the applicant represents on the site plan associated with the application is sufficient.***

f. In granting any variance, the Board shall record in its minutes the circumstances and conditions constituting the hardship or practical difficulties upon which the variance is based.

**Summary**

Based on the above findings supported by the attached exhibits, staff finds that this application satisfies the Variance criteria and recommends approval.



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Development Services Department