

RESOLUTION NO. 15-03

RESOLUTION OF THE TOWN OF ST. LEO TOWN COMMISSION APPROVING SITE PLAN/VARIANCE REVIEW (SPR/VAR#15-A) RELATED TO TEMPORARY USE PERMIT (TUP#13-A) CUP OF ORGANIC FOR VARIANCES TO PERMIT A TEMPORARY USE TO EXCEED THE MAXIMUM PERMITTED TIME PERIOD OF SIX (6) MONTH AS SET FORTH IN THE LAND DEVELOPMENT CODE (LDC) SECTION 8.3 AND VARIANCES TO PARKING LOT LANDSCAPING AND PAVING REQUIREMENTS TO SECTIONS 12.3 AND 13.3. IN ORDER TO ULTIMATELY ESTABLISH A CUP OF ORGANIC AS A PERMANENT USE.

WHEREAS, The Town of St. Leo Town Commission desires to facilitate the development and growth of small businesses within the Town of St. Leo, and,

WHEREAS, the Town of St. Leo Town Commission has utilized the Temporary Use Permitting process as a means to facilitate the development and growth of small businesses within the Town of St. Leo with the ultimate goal of bringing the Temporary Use site into compliance with the Town of St. Leo Land Development Code (LDC), and

WHEREAS, a Temporary Use Permit application (TUP #13-A) was submitted by Mr. Torres (Applicant) to operate a temporary use for drive-thru coffee and pastries sales (Cup of Organic) from a portable concession unit for a continuous period (Monday through Saturday) up to one (1) year pursuant to the LDC Article VIII, Special Exception, Conditional and Temporary Uses, and requesting a variance to the LDC Article XI, Sign Regulations, and

WHEREAS, The Town Commission approved said Temporary Use Permit on February 11, 2013, but denied the sign variance, and

WHEREAS, the Town Commission has granted two extensions of time for the Temporary Use Permit, in which the last extension expires on June 9, 2015, and

WHEREAS, pursuant to the Town of St. Leo Land Development Code Article VIII, Section 8.3 Temporary Uses, a public hearing meeting was advertised and held on June 8, 2015, before the Town of St. Leo Town Commission, which gave full and complete consideration to the recommendations of the staff and evidence presented at the public hearing.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN OF ST. LEO TOWN COMMISSION:

SECTION A. REQUEST

The Applicant is requesting an extension of the Temporary Use Permit TUP-#13-A for a continuous period (Monday through Saturday) until September 30, 2016 and variances to LDC Article VIII, Section 8.3C. Temporary Uses, Article XII, Section 12.3 Vehicular Use Area Landscaping Requirements and Article XIII, Section 13.3 Vehicular Use Areas as more fully described in the Exhibit A, in order to ultimately establish a Cup of Organic as a permanent use.

## SECTION B. FINDINGS AND CONCLUSIONS

Based on the continuing operation of Cup of Organic and the ultimate goal of the Town of St. Leo Town Commission to bring the site into compliance with the Land Development Code, staff has prepared a phasing plan to bring the Cup of Organic site into substantial compliance with the LDC (Exhibit A).

## SECTION C. TOWN COMMISSION DECISION

The Town of St. Leo Town Commission hereby APPROVES the temporary use extension request until September 30, 2016 and APPROVES the requested variances in order to transition from the TUP to the permanent approval of the Cup of Organic use, and contingent on compliance with the following conditions:

1. Provide perimeter landscaping generally as shown on Exhibit A as follows:
  1. Plant along the north property boundary: 4 canopy trees (Live Oaks or other canopy trees as approved by the Town Planner) with a continuous hedge.
  2. Plant along the west property boundary: 5 canopy trees (Live Oaks or other canopy trees as approved by the Town Planner) with a continuous hedge.
  3. Final placement of trees to be approved by the Town Planner.
2. Complete perimeter landscaping pursuant to the following Phasing Schedule:
  - a. North boundary: Completed by December 31, 2015.
  - b. West boundary: Completed by June 30, 2016.
3. All canopy trees to be a minimum of two (2) -inch caliper and minimum 10' in height and hedges to be a minimum of 24-inches high planted 30-inches on center.
4. Approve the continued use of grass parking areas.
5. Provide four (4) parking spaces at the <sup>south</sup> northeastern quadrant of the site for use by the adjacent restaurant.
6. Construct a main travel lane (minimum 12' wide) either with asphalt or medium sized gravel on sand base as generally shown on Exhibit A to be completed by September 30, 2016.
7. All signage on the site must meet the Sign Code.
8. After September 30, 2016, the Town staff shall conduct an inspection to determine compliance with the above conditions.
9. Upon a compliance recommendation by the Town staff, the Town Commission will adopt a Compliance Resolution, at a regularly scheduled meeting, stating that the use can be operated on a permanent basis provided compliance is maintained.
10. The Town Commission can terminate the Temporary Use permit if it is determined that the above conditions and phasing have not been met at the time of the compliance inspection required by condition 8 above.

SECTION D. EXHIBIT A

The following exhibit is attached to this resolution and incorporated by reference:

Exhibit A: Town Planner Report.

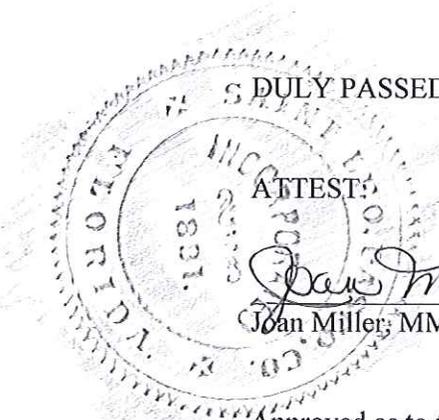
SECTION E. TOWN COMMISSION MOTION

The foregoing resolution was adopted by the Town of St. Leo Town Commission vote as follows:

Richard H. Christmas, Mayor - absent  
James Hallett, O.S.B.  
Gregory P. Smith  
Donna DeWitt, O.S.B.  
Curtis Dwyer

DULY PASSED AND ADOPTED this 8<sup>th</sup> day of June, 2015.

ATTEST:

  
*Joan Miller*  
Joan Miller, MMC, Town Clerk

*James Hallett, O.S.B.*  
James Hallett, O.S.B. – Mayor Pro Tem

Approved as to form by:

*Patricia A. Petruff*  
Patricia Petruff, Esquire, Town Attorney

**EXHIBIT A**  
**Town Planner Report**



Town of St. Leo

**SITE PLAN /VARIANCE REVIEW (SPR/VAR#15-A) RELATED TO TEMPORARY  
USE PERMIT (TUP#13-A) CUP OF ORGANIC  
TOWN STAFF REPORT  
Town Commission Meeting June 8, 2015**

**Case File #:** Site Plan /Variance Review (SPR/VAR#15-A) related to Temporary Use Permit (TUP#13-A)

**Applicant/Owner:** Fay McKean

**Representative:** Douglas Torres

**Location/Legal Description:** Lots E, F, G and H, Block 3 of J.S. Flannigan's Subdivision. Folio number 01-25-20-0010-00300-00F0.

**Future Land Use Designation:** Business

**Zoning District Designation:** Business

**Request:**

**1. Variance to LDC, Article VIII, Section 8.3 C. Temporary Uses**

Relevant section of the code is as follows:

*" The following uses/events may be permitted temporarily for a period of up to six (6) weeks in any six-month period after issuance of a Temporary Use permit, and if necessary, a building permit by the Building Official, any permit required by the Pasco County Health Department and any required liquor license:"*

The applicant is requesting to continue to operate a temporary use for drive-thru coffee and pastries sales from a portable concession unit for a continuous period (Monday through Saturday) up to September 30, 2016.

**2. Variance to LDC Article XII, Section 12.3 Vehicular Use Area Landscaping Requirements Perimeter Landscaping as follows:**

- a. *Required North boundary S.R. 52 (242 LF): 10 canopy trees, 12 understory trees and a continuous hedge.*
- b. **Requested: 4 canopy trees and continuous hedge**
- c. *Required West boundary S.R. 52 (158 LF): 6 canopy trees, 8 understory trees and continuous hedge.*
- d. **Requested: 5 canopy trees and continuous hedge.**

3. Variance to LDC Article XII, Section 12.3 Vehicular Use Area Landscaping Requirements Interior Landscaping as follows:

- a. *Required: 10% landscaped interior vehicular use area.*
- b. **Requested: 100% grass parking area.**
- c. *Required: End island planters with one tree.*
- d. **Requested: No end islands.**

4. Variance to LDC Article XIII, Section 13.3 Vehicular Use Areas as follows:

**Required:** *All vehicle uses areas shall be graded for proper drainage and shall be surfaced so as to provide a durable and dustless surface including, but not limited to, a gravel, concrete, pervious pavement or bituminous concrete surface. Where practical, pervious pavement should be utilized. Grass parking surfaces may be approved for up to twenty (25) percent of the required parking spaces and for all parking spaces in excess of the required parking. However, all handicapped spaces and driveway aprons onto a public street shall be paved.*

**Requested:** Provide 100% grass parking lot with timbers as wheel stops.

**Temporary Use Review Application Overview**

The Town Commission originally approved said Temporary Use Permit on February 11, 2013, but denied a request for a sign variance to operate a temporary use for drive-thru coffee, tea and pastry sales from a portable concession unit (8' x 16' or 128 square feet) for a continuous period (Monday through Saturday) up to one (1) year. Subsequent to the 2013 approval, the Town Commission granted two extensions, the last extension to expire on June 9, 2015. The Applicant is requesting an extension to September 30, 2016.

The portable concession unit is set back at least fifty (50) feet from S.R. 52 on the north and S.R. 52 on the west. The LDC requires a 50' front yard setback on the west and 10' street side yard setback on the north. Setbacks on the south and east are required to be 10'.

The required parking for the 128 square feet concession unit (retail use) is two spaces and the plan provides 19 grass spaces. The parking area is outlined utilizing railroad timbers. The timbers are set back ten (10) feet from S.R. 52 along the north and west. FDOT has approved access to S.R. 52 from the west as right-in only. Access on S.R. 52 at the northeastern end is via a shared driveway with Mr. Flott's restaurant. As a result of the shared access with Mr. Flott's restaurant, two parking spaces and landscape buffer are lost. Mr. Torres has provided two (2) parking spaces for Mr. Flott's patrons at the southeast corner of the subject site. Mr. Flott submitted a letter of support at the 2013 hearing.

To-date, traffic cones have been provided to direct and control traffic entering the site from S.R. 52 on the west, no traffic cones are shown for directing entering and exiting traffic through Mr. Flott's site to S.R. 52. The portable concession unit has an order/pick-up window on each side and a pedestrian order/pick-up window in the front.

### **Town Commission Variance Review Criteria:**

Pursuant to the LDC (Section 9.2- Variance Hardship Criteria), no variance shall be granted unless the following conditions exist:

1. State the special conditions and/or circumstances applying to the building or other structure or land for which such variance is sought.
2. Are the special conditions and/or circumstances peculiar to the property, structures, or buildings, and do not apply generally to neighboring lands, structures, or buildings in the same zoning district.
3. Are the existing conditions and/or circumstances such that:
  - a. The strict application of the provisions of this Chapter would deprive the applicant of reasonable use of said land, building, or structure; and
  - b. The peculiar conditions and circumstances pertaining to the variance request are not the result of the actions by the applicant.
4. The variance request is in harmony with and serves the general intent and purpose of this Chapter and the Comprehensive Plan.
5. That the variance, if allowed, will not substantially interfere with or injure the rights of others whose property would be affected by allowance of the variance.
6. That allowing the variance will result in substantial justice being done, considering both the public benefits intended to be secured by this Chapter and the individual hardships that will be suffered by a failure of the Town Commission to grant a variance.

Another factor that should be considered by the Town Commission in the review of any variance request is whether the granting of the variance would set a precedent that could allow others to request the same type and degree of variance from LDC requirements.

### **Staff Analysis**

The Town of St. Leo Town Commission has utilized the Temporary Use Permitting process as a means to facilitate the development and growth of small businesses within the Town of St. Leo with the ultimate goal of bringing the Temporary Use site into compliance with the Town of St. Leo Land Development Code (LDC) and establishing a permanent use. The Cup of Organic portable concession unit (8' x16') only requires two parking spaces (one regular space and one handicap space). This represents a very small-scale use compared to the size of the tract of land (0.67 acres). Therefore, full compliance with LDC paving and landscaping requirements may be burdensome for such a very small-scale use.

Based on the above considerations, the Town Planner prepared a draft paving and landscape compliance plan that was discussed at the April 13, 2015 Commission meeting. Mr. Torres was present at the meeting and indicated that he was in agreement with the concept plan and the benchmark dates for achieving substantial compliance with the LDC (Exhibit A). In achieving substantial compliance, and ultimately permanent approval, variances are required as previously presented on pages 1 and 2 of this report.

## Town Commission Decision

The Town of St. Leo Town Commission hereby APPROVES the temporary use extension request until September 30, 2016 and APPROVES the requested variances in order to transition from the TUP to the permanent approval of the Cup of Organic use and contingent on compliance with the following conditions:

1. Provide perimeter landscaping generally as shown on Exhibit A as follows:
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This report has been prepared by:

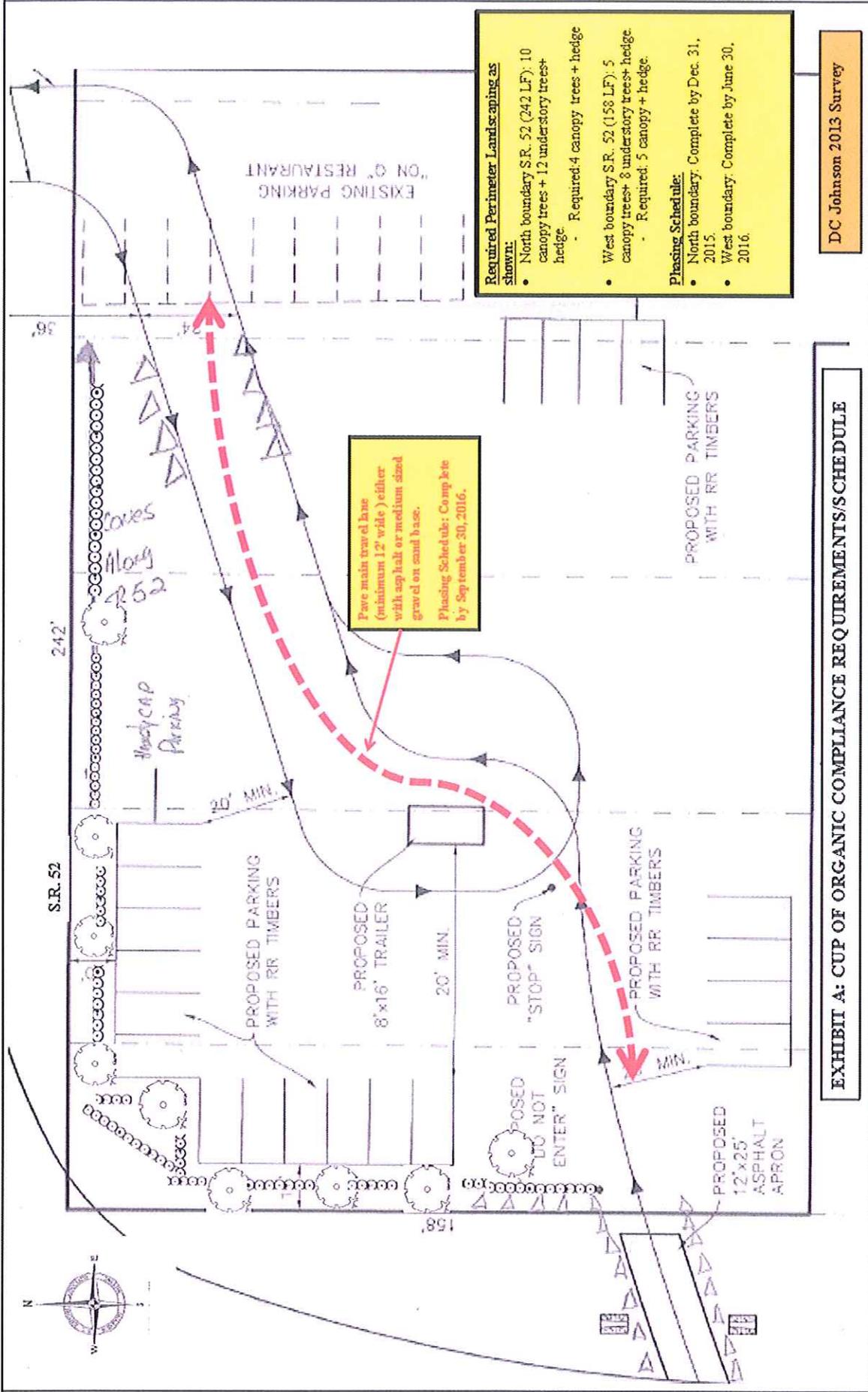


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Jan A. Norsoph, AICP  
Engelhardt, Hammer & Associates, Inc.  
Town of St. Leo Planning Consultant

*Engelhardt, Hammer & Associates reserves the right to update this report upon becoming aware of new or updated information.*

**EXHIBIT A**  
**Cup of Organic Concept Compliance Plan**



**EXHIBIT A: CUP OF ORGANIC COMPLIANCE REQUIREMENTS/SCHEDULE**