LEE COUNTY ORDINANCE NO. 90-10

AN ORDINANCE CREATING THE STATE ROAD 80 OVERLAY DISTRICT SO AS TO PROVIDE FOR ADMINISTRATIVE APPROVALS TO GIVE RELIEF FROM CERTAIN DEVELOPMENT REGULATIONS FOR THOSE PROPERTIES WHICH WILL BE ADVERSELY AFFECTED BY THE STATE ROAD 80 ROAD WIDENING; PROVIDING FOR PURPOSE, INTENT AND SCOPE; PROVIDING FOR PROPERTY DEVELOPMENT REGULATIONS TO INCLUDE: STANDARDS FOR MINIMUM LOT DIMENSIONS, SETBACKS, AND MAXIMUM LOT COVERAGE; REDUCTION OF REQUIRED OPEN SPACE, LANDSCAPING, AND BUFFERING; MODIFICATIONS TO ACCESS POINTS, PARKING REQUIREMENTS, AND SIGN REGULATIONS; PROVIDING FOR APPEALS; PROVIDING FOR CONFLICTS WITH OTHER LAWS, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Lee County, Florida, has adopted comprehensive land development regulations; and,

WHEREAS, the Board of County Commissioners of Lee County, Florida, recognizes that, under certain circumstances, variances from these requirements are necessary for reasonable use of a property; and,

WHEREAS, right-of-way had been acquired by the State for future improvements to State Road 80; and,

WHEREAS, as a result of this previous land acquisition, substandard parcels were created, existing structures were rendered nonconforming and available parking area was
significant reduced; and,

WHEREAS, over the years, the unpaved portions of the State Road 80 right-of-way were used by the commercial property owners to overcome the shortcomings resulting from the prior acquisition; and,

WHEREAS, the State has begun to complete the road widening along State Road 80 which will adversely affect commercial properties unless significant numbers of variances to our land development regulations are obtained; and,

WHEREAS, the Board of County Commissioners of Lee County, Florida, desires to create modifications to the land development regulations for the State Road 80 district which encompasses those properties for which a hardship exists from the road widening so as to preserve the unique character of this community.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION ONE: PURPOSE AND INTENT

The purpose and intent of this Ordinance is to provide a method by which relief from certain zoning, development, and sign regulations can be administratively approved for properties located within the State Road 80 Corridor, more specifically described below, which have been, or will be, adversely affected when the road is widened. The historic nature of development and subdivision of properties along the State Road 80 frontage caused the formation of irregular or inadequate lot widths, depths and overall lot area quantities.
The irregular shape and size of the properties creates a hardship in the development and improvement of the property fronting State Road 80 to include, but not limited to, meeting ground mounted sign setback regulations, meeting off-street parking requirements, and meeting open space and buffering requirements.

This district is an overlay district in that it provides regulations and restrictions in addition to, or specifically modifies, the regulations and restrictions set forth in the Zoning Ordinance for conventional zoning district(s) in which the property is located, the Development Standards Ordinance, and the Sign Ordinance.

SECTION TWO: SCOPE

The provisions of this overlay district apply only to those properties which physically abut or front upon State Road 80 from the center line of Prospect Street to the Interstate 75 Interchange.

SECTION THREE: PROPERTY DEVELOPMENT REGULATIONS

A. Minimum Lot Dimensions

Reduction for the minimum lot depth and/or area requirements set forth in the Property Development Regulations for the zoning district in which the property is located may be administratively approved by the Zoning Director as follows:

1. The Zoning Director may approve a use of a lawfully existing lot which does not comply with the width and/or depth and/or area requirements of the zoning
district in which the property is located as long as the noncompliance was a result of the road right-of-way acquisition program and not otherwise self-created, and the use is permitted in the zoning district.

2. The Zoning Director may approve the creation and use of a new lot even if the lot depth fails to comply with the zoning district regulations as long as the lot width and area requirements are complied with and the lot is created in accordance with all other applicable regulations.

B. Setbacks

The minimum setback requirements set forth in the Zoning Ordinance for street, side, and/or rear setbacks may be reduced by the Zoning Director as follows:

1. Existing Buildings and Structures

Buildings and structures within the redevelopment district which are not in compliance with the street setback requirements of the Zoning Ordinance shall be legal nonconforming buildings subject to the provisions of Sections 604.A and B of the Zoning Ordinance.

2. New Buildings and Structures

Any building or structure erected after the effective date of this Ordinance shall be required to comply with all applicable development regulations provided that:
a. Where buildings on the abutting properties on both sides of the property in question are located closer to the street right-of-way than required by the Zoning Ordinance, the Zoning Director may allow a street setback equal to the average setback of the two abutting buildings.

b. Where only one of the abutting lots has been developed, the Zoning Director may approve a setback equal to one half of the sum of the setback for the structure existing on the abutting lot and the required setback.

C. Maximum Lot Coverage

In those zoning districts wherein the property development regulations establish a maximum permitted lot coverage, if the property owner had developed and used part of the right-of-way for parking or other development purposes, the area of the right-of-way so used may be calculated as part of the lot area for determining maximum permitted lot coverage.

D. Open Space, Landscaping, Buffering

The minimum open space, landscaping, and buffering required for developments may be modified as follows:

1. Lots Which Meet or Exceed Required Standards

Lots which meet the minimum area requirements for the district in which located shall be required to comply with all open space, landscaping, and buffer
requirements in effect at the time of permit application.

2. Lots Which Cannot Meet Standards

The Zoning Director may administratively approve modifications to the buffering, open space, and landscaping requirements for lots which cannot meet the area or dimensional requirements of the district in which located due to the road widening as follows:

a. Buffering: Buffer areas between parking lots and the street right-of-way line may be waived provided that a fence, wall, or other acceptable method is used to prevent vehicles from entering the lot or parking spaces other than the designated access point.

In the event the property owner would still not be able to develop his property in accordance with all other applicable regulations, the Zoning Director may administratively approve modifications to the open space requirements.

b. Open Space: The percentage of open space required may be reduced up to fifty (50) percent of the required open space.

In the event the property owner would still not be able to develop his property in accordance with all other applicable regulations, the Zoning Director may administratively approve
modifications to the landscaping requirements.

c. Landscaping: Landscaping requirements may be reduced in proportion to approved modifications to the open space requirements.

E. Access

The Zoning Director, with the concurrence of the County Engineer, may reduce the access point distance separation requirements when the proposed driveway or parking lot access is designed to provide the only vehicle access to two or more abutting properties.

F. Parking

The Zoning Director may modify parking requirements for uses located within the overlay district as follows:

1. Properties Meeting Minimum Required Lot Dimensions

   No parking modifications shall be administratively approved for any use located on a lot or parcel which meets the minimum lot depth, width and area requirements for the zoning district in which located after the road widening has been completed.

2. Properties Reduced Below Minimum Depth Requirements
   a. The Zoning Director may administratively approve a reduction in the number of required parking spaces in proportion to the amount that the lot was reduced in depth by the road widening.

   Example: A lot originally 100 feet deep is reduced by 20 feet (one-fifth of the
depth) by the road widening project. The Zoning Director may reduce the parking requirement by one-fifth.

b. The Zoning Director may administratively approve parking off-site provided the parking lot is located within 300 feet of the property in question and provided further that no road or other restrictive barrier exists between the use and the parking lot which would prohibit safe pedestrian travel.

G. Signs

All signs within the overlay district shall comply with the Lee County Sign Ordinance, provided that, where existing buildings located on the same property are closer to the right-of-way than normally required by the Zoning Ordinance and therefore make it impossible to locate a ground-mounted sign in compliance with the Sign Ordinance, the Zoning Director may approve one of the following alternatives:

a. Reduce the required sign setback to accommodate a permitted ground-mounted sign provided that no part of the sign shall be permitted to encroach into the public right-of-way; OR

b. Approve a ground-mounted sign to be located in the side yard next to the building but at a higher height than normally permitted provided that said sign shall not exceed 30 feet in height.
H. APPEALS

Appeals from any decision of the Zoning Director shall be in accordance with the procedures for appeals of administrative decisions as set forth in the Zoning Ordinance.

SECTION FOUR: CONFLICT WITH OTHER LAWS

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance, the requirements adopted in this Ordinance shall apply for any property located within the State Road 80 Corridor, described herein.

SECTION FIVE: SEVERABILITY

If any section, subsection, sentence, clause or phrase or if any portion of this Ordinance is found for any reason to be invalid, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate and distinct, an independent provision, and such holding shall not affect the validity of any remaining portions thereof.

SECTION SIX: EFFECTIVE DATE:

The provisions of this Ordinance shall become effective immediately upon receipt from the Secretary of State that said Ordinance has been duly filed with the Secretary of State of the State of Florida.

THE FOREGOING ORDINANCE was offered by Commissioner Fussell, who moved its adoption. The motion was seconded by Commissioner Judah and, being put to a vote, the vote was as follows:
DONE AND ADOPTED this 21st day of March, 1990.

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

APPROVED AS TO FORM:

By:
Office of County Attorney