

**DEVELOPMENT ORDER #DOR2016-06
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DEVELOPMENT ORDER
GRANTING VARIANCE**

APPLICANT: Burrell Engineering, Inc.
VARIANCE #: VAR2016-07
OWNER(s)/Manager: Revenue Properties Dunnellon LLC
ADDRESS OF PROPERTY: 11352 & 11262 N. Williams Street
Dunnellon, Florida 34431
PARCEL ID #: **33639-002-00 & 33639-004-00**
ZONING DESIGNATION: General Business (B-4)
COMPREHENSIVE PLAN
LAND USE DESIGNATION: Commercial

THIS MATTER came before the City Council on the 12th day of December, 2016, pursuant to Section 94-37(11)(a) of the Land Development Regulations (LDR) and Section 13.15 of Appendix A, "Zoning," upon the Applicant's request for a variance from Section 9.3-2(d)5 all buildings and sites shall provide leadership in energy and environmental design (LEED) certification. After having considered the recommendation of the Planning Commission and Staff's Report, having heard testimony, and being otherwise duly advised on the matter, the following findings of fact and conclusions of law are made:

Findings of Fact.

1. The subject property comprises 14.34 acres and is located on U.S. 41 (Williams Street) in Dunnellon.
2. The property is zoned General Business (B-4) with a Comprehensive Plan Future Land Use designation of Commercial. The goals, objectives, or policies of the Comprehensive Plan do not specifically prohibit variances from the LEED certification requirement.
3. The subject property is owned by Revenue Properties, LLC. The property was built in 1985 under Permit #s DN01735 and DN01787.

4. Since construction, the City's land development regulations have been amended, causing the subject property to be nonconforming.

5. Section 4.10 Appendix A, "Zoning," requires that any additions, extensions or alterations to existing buildings or structures which are made nonconforming by changes in the zoning code or land development regulations shall comply with all applicable provisions of the zoning code.

6. The Applicant is seeking a variance from Section 9.3-2(d)5 that all buildings and sites shall provide leadership in energy and environmental design (LEED) certification. The Applicant is therefore seeking relief from Section 9.3-2(d)5.

7. Applicant requests that a variance be granted by allowing progressive, efficient, sustainable green building design standards in lieu of LEED certification.

8. Granting a variance from Section 9.3-2(d)5, in addition to a grant of other variances requested by the Applicant, will allow the subject property to be expanded and increase the functionality of the property.

Conclusions of Law.

9. Granting the variance is not inconsistent with the City's Comprehensive Plan.

10. ***Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the B-4 zoning district.*** Rainbow Square was constructed in 1985. At that time the codes were much different than they are now. This site is constrained by those regulations and is not able to support the requirements of new development without razing the whole structure. Currently there are active leases in the center so the only options are to work within the confines of the existing development. This situation constitutes a special circumstance and condition peculiar to this structure.

11. ***The special conditions and circumstances do not result from any actions of the Applicant.*** The Applicant/owner of the center did not build or design the center and did not establish the regulatory framework under which it was built. The owner is attempting to revitalize the center in a cost effective way and to utilize it to its highest and best use.

12. ***Granting the variance requested will not confer on the applicant any special privilege that is denied by ordinance to other lands, buildings, or structures in the same zoning district.*** There are two major centers in the immediate area that have structures which do not meet the LEED certification requirement or the 2009 code. Granting of these variances will continue the parity that exists between Rainbow Square and the other major shopping centers in the area and will not confer any special privileges to the applicant.

13. ***Literal interpretation of the provisions of the ordinance requiring a LEED certification would deprive the Applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the ordinance and would work unnecessary and undue hardship on the Applicant.*** The Applicant, without these variances, would be severely limited in its ability to attract new tenants. Meeting current LEED certification requirements would cause excessive financial burden on the owner. This would constitute an unnecessary and undue hardship on the owner.

14. ***The variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.*** The Applicant has worked with Staff in changing the proposed preliminary site plan to create the least amount of impact to the code requirements. The owner is incorporating Green building design standards and is following the guidelines of LEED as closely as possible.

15. ***The grant of the variance will be in harmony with the general intent and purpose of the ordinance, and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.*** The design has the needed balance between the requirements of the owner and the goals of the city. Improvements are being made in a way that will meet current consumer needs and improve the Highway 41 corridor through the city.

16. In all other respects, the Applicant has met its burden of satisfying all criteria for the variance pursuant to Section 94-37(11)(a) of the LDR and Section 13.15 of Appendix A, "Zoning."

BASED UPON THE FOREGOING IT IS ORDERED that:

A. The variance from Section 9.3-2(d)5 LEED certification is hereby granted.

Upon motion duly made and carried, the foregoing Development Order was approved and passed upon the public hearing on the 12th day of December, 2016.

ATTEST:

CITY OF DUNNELLON

Dawn M. Bowne, M.M.C.
City Clerk

Walter Green, Mayor

Approved as to Form and Legal Sufficiency:

Andrew J. Hand, City Attorney

I HEREBY CERTIFY that a copy of the foregoing Development Order was sent by electronic mail to Burrell Engineering, Inc., at troyburrell@bellsouth.net and by U.S. Mail to Burrell Engineering, Inc., 12005 N. Florida Ave., Dunnellon, FL 34434 on the ____ day of December, 2016.

Dawn M. Bowne M.M.C.
City Clerk