

**Letter of Opposition
to Proposed Rezoning and Development RZ PD 22-0865
5500 Memorial Hwy, Tampa: Folio # 11994.0100**



Dear Hearing Master:

The Dana Shores Civic Association (DSCA) **OPPOSES** the proposed rezoning and development RZ PD 22-0865 at 5500 Memorial Hwy and asks that the proposed PD ultimately be denied.

Our major objections focus on nonconformance and inconsistencies with County regulations and policies codified in Hillsborough, Fla., Land Development Code (LDC); Hillsborough County Comprehensive Plan (HCCP); and Hillsborough County Future Land Use (FLU).

1. Nonconformance with Design Standards Required for "C" Use of Commercial Apartments in BPO

- Inconsistent with Buffering and Screening Requirements
 - ☒ LDC § 6.06.06 & § 6.11.16
- Inconsistent with Setback Requirements
 - ☒ LDC § 6.01.01

2. Nonconformance with the Purpose and Intent of Commercial Apartments

- ☒ LDC § 6.11.16

3. Inconsistencies & Implications of Proposed Density Increases & Design Variances -- Incompatibility with the Surrounding Area

- ☒ FLU, Community Development and Land Uses Policies 16.2, 16.8, & 16.10

4. Inconsistencies & Implications of Proposed Density Increases & Locational Criteria Policy Waiver – Traffic & Public Safety

- Inconsistent with the Locational Criteria Policy, Adds to Congestion and Highway Safety Issues
 - ☒ HCCP, Commercial Locational Criteria Policy 22.1-11
- Increases Evacuation Clearance Times
 - ☒ HCCP, Coastal Management Policy 3.2-4

Thank you for your time and consideration. Supporting details are attached.

Sincere regards,

A handwritten signature in blue ink that reads "Allison Roberts".

Allison Roberts
President, Dana Shores Civic Association
(representing 332 homeowners)

Background

The Scottish Rite Temple Association, through a contingent contractual arrangement with private real estate development corporation the Onicx Group (hereafter referred to as the “Applicant”), is requesting rezoning of an 8.46-acre tract located at 5500 Memorial Highway.

The parcel currently has the following characteristics:

- Business Professional Office (BPO) zoning
- Res-20 Future Land Use (FLU) designation
- Existing construction including the following:
 - Scottish Rite Temple – Meeting Rooms, Offices, and Large Event Hall
 - Building Type 69 (Clubhouse)
 - 40,186 SF (square feet), built in 1973
 - Primarily a single & 1.5 story building (<3,000 SF of 2nd story and finished upper story)
 - 157,000 SF asphalt paving (parking lot)
 - 1,200 linear feet of seawall
 - Concrete pavement, fence CL6, and wrought iron fence

The Applicant has proposed rezoning to a PD and has requested variances for development of a 313,600 SF commercial apartment complex (inclusive of 78,400 SF non-residential uses) and a 25,000 SF membership organization (inclusive of a banquet/reception hall).

- The primary structure on the proposed PD is the 275-unit, four-story apartment complex situated above a parking garage located at ground level (effectively 5 stories in height) located along the Sweetwater Creek waterfront that will, according to Onicx Group legal counsel Mr. William Molloy, be **developed for the benefit of Onicx Group.**
- The secondary structure is a new building with uses as a membership organization that, according to the same legal counsel, will be **developed for the benefit of the Scottish Rite Temple Association.**
- Parking areas will exist under the commercial apartment building (and associated courtyards) and in proximity to the association’s building for its membership organization.

1. NONCONFORMANCE WITH DESIGN STANDARDS REQUIRED FOR "C" USE OF COMMERCIAL APARTMENTS IN BPO (BUFFERING, SCREENING, & SETBACKS)

HILLSBOROUGH, Fla., LAND DEVELOPMENT CODE Design Standards and Improvement Requirements, § 6.01.00 invokes § [6.01.03](#), § [6.06.06](#), and § [6.11.00](#) based on the parcel's BPO zoning.

LDC § 6.06.06 (A) requires a 20' buffer and screen type B on both side and rear boundaries based on the PD's Group 5 (office commercial) adjacency to Groups 1 (RSC-6) and 3 (RMC-16).

SIDE BOUNDARY (EAST): The Applicant has proposed a 3' to 10' buffer on the east, meeting only **15% - 50% of the requirement**.

SIDE (WEST) & REAR (SOUTH) BOUNDARIES: The PD does not clearly depict the 20' buffer required along the west and south boundaries. Rather than committing to type B screening as required, the separate narrative indicates the Applicant's sense of commitment "to increase the landscaping by keeping existing vegetation and adding new vegetation to provide a greater screening." Based on our understanding that the PD governs future actions, not current and future owners' sentiments, we believe the proposal **meets none of the west side and rear requirements**.

The PD is, thereby, found **INCONSISTENT** with **LDC § 6.06.06**

Within LDC § 6.11.00, subsection § 6.11.16 is dedicated to Commercial Apartments, stating the following:

To further the provision of affordable housing and promote vertically mixed-use development in certain commercial and office zoning districts, commercial apartments shall be allowed in the BPO, CN, CG, SPI-UC-1 and SPI-UC-2 zoning districts, as well as in PD (Planned Development) zoning districts which generally permit such district uses. Commercial apartments shall meet the following criteria:

- D.** Buffering and screening for the parcel on which the commercial apartments are located, as well as for development on adjacent parcels, shall be provided as if no commercial apartments exist.

For the proposed PD, this requirement is both additive and critically dependent upon the County's required **20' buffers, type B screening, 90' side setbacks** (10' setback + 80' for height accd. to LDC § 6.01.01), and **100' rear setback**.

The proposed PD is **INCONSISTENT** with both **LDC § 6.01.01 & § 6.11.16**. It only commits to the following, which can in no way buffer and screen the commercial apartment as if it did not exist:

- **SIDE BOUNDARY (EAST):** 3' - 10' buffer, type B screening, 30' side setback
- **SIDE BOUNDARY (WEST):** No buffer, no screening, 30' side setback
- **REAR BOUNDARY (SOUTH):** No buffer, no screening, 60' rear setback

The Applicant indicates in the November 22 application that, “the intent for the additional setback (required by the County’s LDC) is to address compatibility to adjacent neighbor(s) and to provide sufficient distance between both use so that the structures height does not inundate the adjacent lot.”

To verify the intent of the LDC, we reviewed HILLSBOROUGH, Fla., LAND DEVELOPMENT CODE Definitions, § 12.01.00, which offers the following:

Buffer: Horizontal distance from the property line which may only be occupied by screening, underground utilities, storm water ponds with slopes no steeper than 4:1 and landscaping materials, or by undisturbed or appropriately managed vegetation. (See [Sec. 6.06.00.](#)) Buffers and screening are used to reduce the impact of a use of land or adjacent uses which are of significantly different character, density, or intensity. As the term is used in [Section 4.01.00](#), buffer means an area of undisturbed or appropriately managed vegetation surrounding a natural resource that is utilized to minimize man-induced disturbances, including the secondary impacts of development.

Setback: The physical distance which serves to minimize the effects of development activity or the secondary impacts of development on an adjacent property, structure or natural resource, and within which it may be necessary to restrict activities.

Clearly, the LDC takes a broader view when contemplating the value of buffers and setbacks, including secondary impacts. It is, therefore, relevant that the proposed PD encroaches on multiple property owners’ rights and reduces environmental protections as outlined in the following examples:

- i. [Noise Pollution](#) – this will primarily affect the single-family residential homeowners west, north, and south of the proposed PD given that sound will reverberate off the three walls within each courtyard of the “E” structure and that such courtyards shall, according to the developer, be used for outdoor gatherings and entertaining. In addition, the cooler air that naturally sits just above the water’s surface causes refraction of sound waves, and because of the proposed PD’s waterfront location along Sweetwater Creek, this will cause the sound to appear amplified when it reaches other surrounding property owners. The longer sound waves will also travel greater distances, affecting more residents, than they would if the proposed PD were not waterfront.
- ii. [Loss of Privacy](#) – this will primarily affect single-family residential homeowners to the west and south of the commercial apartments, who have purchased waterfront homes largely for their backyard use
- iii. [Light Pollution](#) – this will primarily affect single-family residential homeowners given that light from the commercial apartments will bounce off the water into their homes

- iv. [Reduced Environmental Protections](#) – according to the EPC report in the PD’s project folder, “wetlands are located in the west and south sides of the property.”

The HILLSBOROUGH COUNTY COMPREHENSIVE PLAN (HCCP), Environmental and Sustainability Policy 3.5-8, is to “Establish setbacks and buffers based on current science for protecting the hydrologic and biologic integrity of wetlands/other surface waters, including the Hillsborough County Wetland Ecological Buffers study published in February 2012.”

Ignoring the supporting LDC setback and buffer requirements means ignoring the reasons they were put in place to protect the hydrologic and biologic integrity of wetlands/other surface waters. This would be highly problematic given the property’s location along the waters of historic Sweetwater Creek, and the critical role this estuary performs as it feeds into the waters of Old Tampa Bay. According to a Tampa Bay Estuary Program 2021 report, for the sixth consecutive year, Old Tampa Bay has exceeded chlorophyll-a targets, which contribute to shading and seagrass die-offs.

Consistent with this finding, the Southwest Florida Water Management District (SWFWMD) reported a 16% decline in Tampa Bay’s seagrass coverage from 2018 to 2020. This is equivalent to a loss of over 6,350 acres of local seagrass. All other segments of the Bay are improving with the exception of Old Tampa Bay.

Nonpoint sources, those that are distributed over a wide geographic area such as a watershed, are now the leading polluters of Old Tampa Bay, exceeding total nutrient discharge from power plants, factories, wastewater treatment plants, and other point sources. Once they enter the surrounding surface waters, excessive nutrients promote algal blooms, which block sunlight thereby killing seagrass and lead to low-oxygen (hypoxic) waters thereby killing fish.

The buffers and setbacks serve a critical role in managing these nonpoint sources.

By definition, Sweetwater Creek cannot itself serve as a buffer or setback, given that the buffer and setback are in place partly to protect this natural resource.

- v. [Illegitimate Transfer of Property Lines and Rights](#) – this will primarily affect the multi-family apartment complex directly east of the subject property. The Applicant requests that we count 70 to 77 linear feet between the neighbor’s property line and the neighbor’s closest apartment building as part of the Applicant’s setback. This could severely restrict the neighboring property owner’s future redevelopment options. If they would want to rebuild closer to their minimum setback requirements as allowed by the LDC, they may still be unable to do so given the height of the larger commercial apartment inundating them and other secondary impacts such as loss of privacy, noise, etc. They would essentially be building in the Applicant’s setback.

HILLSBOROUGH, Fla., LAND DEVELOPMENT CODE Zoning Districts, § 2.02.02 Allowable Uses in Zoning Districts, provides a "C" Use of Commercial Apartments in the BPO zoning district. The "C" indicates the use is a Conditional Use that may be allowed in the identified district **pursuant to conformance with the design standards contained in Article VI.**

The PD is **INCONSISTENT** with the LDC Design Standards § 6.01.01, § 6.06.06, and § 6.11.16.

2. NONCONFORMING WITH THE DEFINITION AND INTENT OF COMMERCIAL APARTMENTS

HILLSBOROUGH, Fla., LAND DEVELOPMENT CODE Design Standards and Improvement Requirements, § 6.11.16, which is dedicated to the topic of Commercial Apartments, states the following:

To further the provision of affordable housing and promote vertically mixed-use development in certain commercial and office zoning districts, commercial apartments shall be allowed in the BPO, CN, CG, SPI-UC-1 and SPI-UC-2 zoning districts, as well as in PD (Planned Development) zoning districts which generally permit such district uses.

We believe the proposed rezoning fails to meet the most basic aspect of the commercial apartment definition, its purpose and intent. The above definition states that the purpose of commercial apartments is to promote “vertically mixed-use development,” which is generally recognized as a means of providing local commercial options in support of the residents.

We do not, however, believe the intent was to allow developers to essentially use typical apartment amenities, property management needs, and recategorized apartment space as those local commercial options. With some creative accounting and facility design, non-residential uses in the proposed PD could be more akin to standard apartment amenities and operations.

Other developers might interpret the proposed PD as the precedent for a shell game which, if allowed, will in no way allow the County to achieve the purpose behind commercial apartment designations.

Commercial Apartment Non-Residential Uses (Proposed PD)	Comparison to Typical Apartment (Non-Commercial) Construction
2,100 SF Fitness Center	A fitness center of similar size is a common amenity for an apartment with the proposed number of units
6,650 SF Office	Property management office space is usually required for front- and back-office operations. Office space for other buildings on the property (e.g., the temple) can be supplemented in the same manner.
69,650 SF Mini-Storage	According to statements made by the Applicant during publicly noticed community meetings, the <u>average</u> apartment size in this PD will be 750 SF. Our research shows that this is nearly 200 SF smaller than the average apartment size in Tampa. The mini-storage essentially relocates and converts living space from upper floors into storage space on the first floor. Lease backs would allow excess space to be used to support the property management operation and other buildings on the site (e.g., the temple association).

It is easy to see why developers are incentivized to obtain commercial apartment classification.

Assuming no other building on this property (i.e., removing the temple), the property's designated FLU allows for a 169-unit residential apartment complex (8.46 acres x 20 residential units per acre). In contrast, under the commercial apartment designation, the Applicant has proposed a PD that **increases the number of residential units by +60% (to 275 units) and includes a separate temple.**

Not only does the conditional use of commercial apartments fail to conform with the design standards upon which its use is predicated, the proposed PD also does not appear to meet the overall intent of the LDC provision allowing commercial apartments in the first place.

We believe the applicant's request to apply commercial designation as part of this PD is **INCONSISTENT** with HILLSBOROUGH, Fla., LAND DEVELOPMENT CODE Special and Conditional Uses § 6.11.16 and should be denied on its face. Otherwise, this establishes a precedent that could be used as a roundabout with respect to the County's policies and regulations.

3. INCONSISTENCIES & IMPLICATIONS OF PROPOSED DENSITY INCREASES & DESIGN VARIANCES -

Incompatibility with the Surrounding Area

HILLSBOROUGH COUNTY FUTURE LAND USE, Community Development and Land Uses Policies 16.2, 16.8, & 16.10 are provided below:

Policy 16.2: Gradual transitions of intensities between different land uses shall be provided for as new development is proposed and approved, through the use of professional site planning, **buffering and screening techniques** and **control of specific land uses**.

Policy 16.8: The overall **density** and lot sizes of new residential projects shall reflect the character of the surrounding area, recognizing the choice of lifestyles described in this Plan.

Policy 16.10 Any density increase shall be compatible with existing, proposed, or planned surrounding development. Compatibility is defined as the characteristics of different uses or activities or design which allow them to be located near or adjacent to each other in harmony. Some elements affecting compatibility include the following: **height, scale, mass and bulk of structures, pedestrian or vehicular traffic, circulation, access and parking impacts, landscaping, lighting, noise, odor, and architecture**. Compatibility does not mean “the same as.” Rather, it refers to the sensitivity of development proposals in maintaining the character of existing development.

The Property is immediately and solely surrounded by multi-family and single-family residential uses apart from a single PD that sits across the street and catty corner to this property. The following chart lists the surrounding neighborhoods along with their relative location (N-S-E-W), zoning, maximum height (stories), # of units/dwellings, total acreage, and DU/GA:

Multi-Family	Relative Location	Zoning	Max Height	# Units	Total Acreage	DU/GA
Sweetwater Condo Association (Sweetwater Terrace)	N	RMC-20	Ground Floor +2	19 (9 + 10)	.87 (.47 + .4)	21.8
The Cove at Rocky Point	S	PD	Ground Floor +2	56	15	3.7
Waterview Apartments at Rocky Point	E	RMC-16	2	288	17.8	16.2

Single Family	Relative Location	Zoning	Max Height	# Dwellings	Total Acreage	DU/GA
Vacant Land – County Owned	N	RMC-20	N/A	0	.76	N/A
The Cove at Rocky Point	S	PD	Ground Floor +2	56	15	3.7
Sweetwater	W	RSC-6	2	129	48	2.7

The weighted average DU/GA across all surrounding residential communities is 11.5

$$((56 * 3.7) + (129 * 2.7) + (19 * 21.8) + (288 * 16.2)) / (56 + 129 + 19 + 288) = 11.5$$

The commercial apartment within the proposed PD would be highly incompatible:

- Including the ground floor parking garage,
2 to 3 stories taller than neighboring communities' max. height
4 stories taller than the Sweetwater communities' average height (to the west of the subject site)
- 257 more units within its building than any other surrounding multi-family apartment building (The highest adjacent count is estimated 18 units per building at the apartments immediately east of the proposed PD.)
- The equivalent of a 32.5 DU/GA, nearly three times the weighted average DU/GA across all surrounding residential communities (PLUS the proposed PD includes a building for a membership organization)
- Significant increase in noise. The double courtyards that will fill in the "E" shape are to serve as large-scale outdoor pool/entertaining/gathering areas for residents. The 3-sided structure will cause sound to bounce across the canal (which is further facilitated by properties of how sound travels across water) into residents' homes.

Analysis of the comparable height, mass, scale, density, and noise show that the proposed Planned Development (PD) is **INCONSISTENT** with HILLSBOROUGH COUNTY FUTURE LAND USE, Community Development and Land Uses Policies 16.2, 16.8, & 16.10.

4. INCONSISTENCIES & IMPLICATIONS OF PROPOSED DENSITY INCREASES & LOCATIONAL CRITERIA POLICY WAIVER – TRAFFIC & PUBLIC SAFETY

According to the 2020 Hillsborough County **Level of Service Report**, Memorial Highway was rated an “F” for its Daily Level of Service (LOS) and was already 7% beyond road capacity just west of the subject property. And, according to prior discussions with representatives of Hillsborough County’s Transportation Planning Organization (TPO), no plans exist to widen Memorial Highway.

The proposed development is also subject to the Hillsborough County Comprehensive Plan’s Commercial Locational Criteria per Policy 22.1-11. The nearest qualifying intersection is Dana Shores and Memorial Highway, which is over 1,000 linear feet away from the property.

Intensified use in conjunction with a waiver of the Commercial Locational Criteria Policy jeopardizes public safety on a day-to-day basis and is further intensified during a crisis.

The proposed PD is **INCONSISTENT** with current roadway conditions and HILLSBOROUGH COUNTY COMPREHENSIVE PLAN, Commercial Locational Criteria Policy 22.1-11.

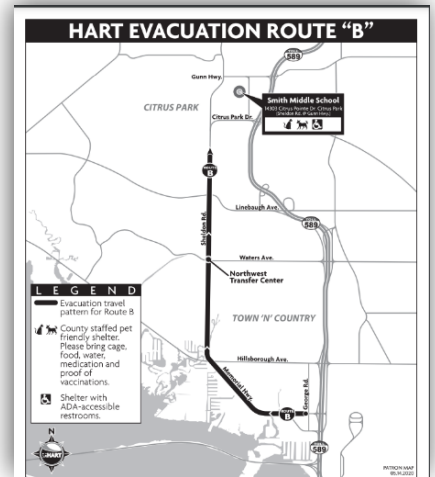
The HILLSBOROUGH COUNTY COMPREHENSIVE PLAN, Coastal Management Policy 3.2-4 is to **“Maintain evacuation clearance time standards on and protect from flooding, all identified major evacuation routes maintained by the County.”**

According to the HILLSBOROUGH COUNTY-CITY COUNTY PLANNING COMMISSION Development in the Coastal High Hazard Area, Coastal Management Element, the County’s 16-hour evacuation Level of Service for a category 5 storm is exceeded around **Category 3, as the clearance time increases to 30 hours (2017 Base Scenario) and 34.5 hours (by 2020).**

Furthermore, the plan acknowledges that evacuation times cannot be corrected adequately through transportation improvements and require additional measures.

The PD is located on Memorial Highway, part of Route B of the Hart Bus Evacuation Route.

This proposed PD significantly increases the parcel’s allowable density along this major evacuation route.



The Applicant’s request to increase density within a CHHA is **INCONSISTENT** with the HILLSBOROUGH COUNTY COMPREHENSIVE PLAN, Coastal Management Policy 3.2-4.

We must increase compliance with County policies that safeguard our communities, not retreat from them. In a CHHA, more residents and increased evacuation times place the existing community at increased risk.

CONCLUSION & OVERALL SUMMARY

In conclusion, the Dana Shores Civic Association requests the proposed PD be denied. We believe our analysis shows that It is INCONSISTENT with Hillsborough County standards and policies.

Approval of the conditional commercial apartment use and related variances and waivers would result in a development that significantly increases the property's density within a Coastal High Hazard Area, is situated along a poorly rated highway that is under capacity and does not offer the parcel a qualifying commercial intersection, sets problematic precedence with respect to commercial apartments including the failure to meet fundamental design standards upon which the conditional use is predicated, encroaches in multiple ways on surrounding property owners' rights, negatively impacts our fragile ecosystem, and is overall incompatible with the surrounding area.

The Applicant has a contingent agreement with the Scottish Rite Temple Association pending rezoning approval. Through proper due diligence, the Applicant would be reasonably aware of the County requirements and property characteristics. The County would not, therefore, create any undue hardship in denying the proposed PD based upon such grounds. The property is also large enough to accommodate many different uses and designs.

We request this application be **DENIED** and, if the developer wishes to proceed, a new plan be presented that consistently aligns with the policies and regulations approved and adopted by the Hillsborough County Board of County Commissioners.