

**PALM BEACH COUNTY
PLANNING, ZONING AND BUILDING DEPARTMENT
ZONING DIVISION**

Application No.: AV-2024-00111
Application Name: Bridgewater PUD/Addison Place
Control No./Name: 1983-00076 Bridgewater PUD/Addison Place
Applicant(s): Carlton Fields, P.A.
Owner(s): JRK Investors INC
Agent(s): Carlton Fields, P.A.
Telephone No.: (561) 650-8044
Project Manager: Michael Birchland, Site Planner II

Title: a Type 1 Variance **Request:** to allow a reduction from the 25-foot minimum separation between a recreation amenity to a Multifamily structure and to allow a reduction from the 25-foot side setback for outdoor recreation amenities.

APPLICATION SUMMARY: The proposed variance is for the recreation area within the Bridgewater PUD. Pursuant to Article 5.B.1.A of the Unified Land Development Code (ULDC), outdoor recreation amenities on recreation areas less than or equal to an acre require a 25 foot side setback and must meet a minimum 25 foot separation from a Multifamily structure. The Applicant has requested a variance to allow the existing recreation equipment to encroach 15.4 feet into the side setback and 6.4 feet into the minimum separation requirements.

SITE DATA:

Location:	West on Mizner Way, approximately 100 feet north of Palmetto Park Road
Property Control Number(s)	00-42-47-20-15-001-0000
Land Use Designation:	Medium Residential, 5 units per acre (MR-5)
Zoning District:	Planned Unit Development (PUD)
Acreage:	0.83 acres
Tier:	Urban/Suburban
Overlay District:	N/A
Neighborhood Plan:	N/A
CCRT Area:	N/A
Municipalities within 1 Mile	N/A
Future Annexation Area	N/A
Commission District	District 5, Mayor Maria Sachs

STAFF RECOMMENDATION: Staff recommends approval of the request, subject to the Conditions of Approval as indicated in Exhibit C.

PUBLIC COMMENT SUMMARY: At the time of publication, Staff had received two contacts from the public regarding this project requesting information regarding the proposed variance.

PROJECT HISTORY: Bridgewater PUD/Addison Place was originally approved as a Planned Unit Development (PUD) under Control Number 1983-00076 by Resolution R-1983-1099 and R-1983-1100 on September 13th, 1983. The development was approved with 166 dwelling units, on approximately 34 acres. At the time of the approval of the PUD a 0.83 acre Recreation area was provided that included a club house, pool, and tennis courts.

In 2016 the Property Owner submitted a building permit to renovate the interior and exterior of the Club house, per B-2016-15020. Notes on the Plans indicated that the installation of playground equipment was not part of the permit request. In 2018, recreation equipment was built on the recreation area without a building permit. This activity was cited by code enforcement on August 12, 2022 (C-2022-04250018). As a result, the Owners submitted a permit for the recreation equipment (PR-2023-017864-0000). During the review of this permit, it was determined that the equipment did not meet the minimum standards for front setbacks and for minimum separation from Multifamily Buildings.

TYPE 2 VARIANCE SUMMARY

ULDC Article	Required	Proposed	Variance
V.1 – 5.B.1.A Outdoor Recreation Amenity Setbacks	25 foot side setback	9.9 foot side setback	15.4 foot reduction in side setback
V-2 – 5.B.1.A Outdoor Recreation Amenity Setbacks	25 foot minimum separation from a Multifamily Structure	18.6 foot minimum separation from a Multifamily Structure	6.4 foot reduction in minimum separation requirements

FINDINGS:

Type 1 Variance Standards:

When considering a Development Order application for a Type 1 Variance, the DRO shall consider Standards a through g listed under Article 2.C.5.F.4, Standards for Zoning or Subdivision Variance. The Standards and Staff Analyses are as indicated below. A Type 1 Variance that fails to meet any of these Standards shall be deemed adverse to the public interest and shall not be approved.

a. Special conditions and circumstances exist that are peculiar to the parcel of land, building, or structure, that are not applicable to other parcels of land, structures, or buildings in the same district:

APPLICANT’S RESPONSE:

The project was originally approved and built nearly 40 years ago in the 1980s before these requirements were codified by ordinances 2014-001 and 2021-06). Furthermore, this is the only area within the recreation tract that can accommodate the play equipment presently being used by the community. This location of the Recreation Tract is oddly shaped with limited ability to provide the required separations and setbacks. At some point in late 2018, the play equipment was installed without permits and it has been used and enjoyed by the community since then. Since the PUD predated this requirement, there is no other place to move or install this equipment. This together with the fact that this entire rental community PUD is owned, operated, and controlled as a single Owner therefore no internal impacts on residents. The play equipment is setback into the property beyond the minimum setbacks so no impacts on surrounding properties will be realized if the equipment is allowed to remain in place.

STAFF’S RESPONSE:

V-1 and V-2- YES: The purpose of the Outdoor Recreation Amenity Setbacks restriction in the ULDC (Unified Land Development Code) outlined in Article 5.B.1.A is to promote appropriate land use and protect the adjacent residential lots from any impact these amenities may have towards the adjacent properties due to excessive noise or other disturbances.

The subject property is a 0.83 acres irregularly shaped recreation tract. The property is developed with a tennis court a pool and a recreation center. These structures are in conformance with the ULDC and the previously approved site plan Per Z/SE-1983-00076 and ZZR-2016-02090). In the case of proposed recreational amenities, not meeting the required 25 foot side setback and 25 foot minimum separation from a Multifamily Structure the intent of the code is still met. The playground equipment in question is located between the Recreational Center building to the south and landscaping to the north (approximately 8 feet tall hedge) that screen the equipment making it not visible from the adjacent residential building The closest Residential building is 18.6 feet to the north with the entrance to the located opposite side of where the equipment is located as shown if Figures 1 and 2 below.

Figure 1: View looking north

Figure 2: View looking Northeast



The playground equipment is located on the northeast corner of the lot. There are constraints of the site that limit the possible locations for the recreation equipment. Immediately to the south of the area where the playground equipment in question is located there is the parking lot and the Mizner Way entrance to recreational tract. The tennis court, the pool and showers are located to the west leaving no other viable option to provide space for the playground equipment as shown in Figures 3, 4, 5.

Figure 3: View looking west



Figure 4: View looking east



Figure 5: View looking south



b. Special circumstances and conditions do not result from the actions of the Applicant:

APPLICANT'S RESPONSE:

The odd shape of the recreation tract makes it difficult, if not impossible to locate play equipment within the recreation tract and comply with code. Play equipment of this type is normal and customary to similar residential developments and it serves as a valuable onsite service to the residents of the rental community.

STAFF'S RESPONSE:

V-1 and V-2 - YES: The special circumstances and conditions do not result from the actions of the Applicant. Although the Applicant constructed the equipment without permits, the recreation area was modified to eliminate parking in order to provide a greater area for equipment. The Applicant advises that the unique shape of the recreation tract makes it difficult to locate the recreation equipment within the recreation tract and comply with ULDC standards

c. Granting the Variance shall not confer upon the Applicant any special privilege denied by the Plan and this Code to other parcels of land, buildings, or structures, in the same district:

APPLICANT'S RESPONSE:

The variance request as applied to this older vested PUD development will not convey any special privileges that are denied by the comprehensive plan and this code to other parcels of land, buildings or structures in the same zoning district.

STAFF'S RESPONSE:

V-1 and V-2 - YES: Granting the variance shall not confer upon the Applicant any special privilege denied by the comprehensive plan and this code to other parcels of land, buildings or structures in the same zoning district. The Applicant is requesting a variance to encroach into the side setback and

reduce minimum separation due to the constraints of the site in order to provide amenities that are commonly provided by other parcels of land in the same zoning district.

d. *Literal interpretation and enforcement of the terms and provisions of this Code would deprive the Applicant of rights commonly enjoyed by other parcels of land in the same district, and would work an unnecessary and undue hardship:*

APPLICANT'S RESPONSE:

A literal interpretation would prevent the PUD from providing playground equipment that is typical to multi-unit residential developments for their residents and children to use.

STAFF'S RESPONSE:

V-1 and V-2 - YES: Literal interpretation and enforcement of the terms and provisions of this code would deprive the Applicant of rights commonly enjoyed by other parcels of land in the same zoning district, and would work an unnecessary and undue hardship. Restricting the PUD from providing recreation equipment that is typical to multifamily residential developments due to the unique configuration of the recreation parcel would deprive the Applicant of commonly enjoyed rights.

e. *Granting the Variance is the minimum Variance that will make possible the reasonable use of the parcel of land, building, or structure:*

APPLICANT'S RESPONSE:

Given the odd shape of the recreation parcel and the limited ability to locate this equipment elsewhere on site, this is the minimum variance that would allow the play equipment to be permitted in its present location.

STAFF'S RESPONSE:

V-1 and V-2 - YES: Granting the variance is the minimum variance that will make possible the reasonable use of the parcel of land, building or structure. The proposed 15.4' side setback reduction and 6.4' minimum separation reduction is the minimum required to allow the recreation amenities to be permitted in its present location.

f. *Granting the Variance will be consistent with the purposes, goals, objectives, and policies of the Plan and this Code:*

APPLICANT'S RESPONSE:

The variance if approved will be consistent with the codes' intent to provide a buffer between residences and recreational play equipment and the proposed reductions in both minimum setbacks and separations will be mitigated by an 8-foot-tall solid hedge that provides a 100% opaque screening separating the play equipment from the adjacent residential buildings.

STAFF'S RESPONSE:

V-1 and V-2 - YES: Granting of the variance will be consistent with the purposes, goals, and objectives, and policies of the comprehensive plan and this code. One of the primary objectives of the Plan and ULDC is to mitigate potential impacts on surrounding developments. The reduction in setbacks and separation criteria is mitigated by existing an 8-foot-tall solid hedge that provides a 100% opaque screening separating the play equipment from the adjacent residential buildings.

g. *Granting the Variance will not be injurious to the area involved or otherwise detrimental to the public welfare:*

APPLICANT'S RESPONSE:

This variance to reduce the minimum setbacks and separation from commonly owned property will not be detrimental to the public welfare in any way.

STAFF'S RESPONSE:

V-1 and V-2 - YES: Granting of the variance will not be injurious to the area involved or otherwise detrimental to the public welfare. The recreation equipment is serving a private residential community that is commonly owned by the same Owner of the recreation tract.

CONCLUSION: Staff has evaluated the standards listed under Article 2.C.5.F.4, and determined the requests satisfy all of the standards. Staff is therefore recommending **approval** of the Type 1 Variance request subject to the Conditions of Approval as indicated in Exhibit C.

CONDITIONS OF APPROVAL

EXHIBIT C:

TYPE 1 VARIANCE

1. The approval is based on the documents submitted with the application and depicted on the survey dated March 7, 2024. Modifications to the Development Order inconsistent with the Conditions of Approval, or changes to the accessory structures and design beyond the authority of the Development Review Officer as established in the Unified Land Development Code, must be approved by the Zoning Commission. (ONGOING: ZONING - Zoning)
2. The Property Owner shall obtain approval of a building permit for the accessory structure prior to May 24, 2025. (BLDGPMT/DATE: BUILDING DIVISION – Zoning)
3. At time of application for a Building Permit, the Property Owner shall provide a copy of this Variance approval along with copies of the approved Plan to the Building Division (BLDGPMT/DATE: BUILDING DIVISION – Zoning).
4. The eight (8) foot high hedge adjacent to the recreation equipment and multifamily building shall be maintained (ONGOING: ZONING – Zoning).
5. Prior to final DRO approval, a Regulating Plan shall be submitted for the recreation parcel that identifies the recreation equipment and the existing eight (8) foot high hedge (DRO: ZONING – Zoning)

COMPLIANCE

1. In Granting this Approval, the Development Review Officer relied upon the oral and written representations of the Property Owner/Applicant both on the record and as part of the application process. Deviations from or violation of these representations shall cause the Approval to be presented to the Zoning Commissioners for review under the Compliance Condition of this Approval. (ONGOING: ZONING - Monitoring)
2. Failure to comply with any of the Conditions of Approval for the subject property at any time may result in:
 - a. The Issuance of a Stop Work Order; the Issuance of a Cease and Desist Order; the Denial or Revocation of a Building Permit; the Denial or Revocation of a Certificate of Occupancy; the Denial of any other Permit, License or Approval to any developer, Owner, lessee, or user of the subject property; the Revocation of any other permit, license or approval from any developer, Owner, lessee, or user of the subject property; the Revocation of any concurrency; and/or
 - b. The Revocation of the Official Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or any other zoning approval; and/or
 - c. A requirement of the development to conform with the standards of the Unified Land Development Code at the time of the finding of non-compliance, or the addition or modification of conditions reasonably related to the failure to comply with existing Conditions of Approval; and/or
 - d. Referral to Code Enforcement; and/or
 - e. Imposition of entitlement density or intensity.

Staff may be directed by the Executive Director of PZ&B or the Code Enforcement Special Master to schedule a Status Report before the body which approved the Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or other zoning approval, in accordance with the provisions of Section 2.E of the ULDC, in response to any flagrant violation and/or continued violation of any Condition of Approval. (ONGOING: ZONING - Monitoring)

DISCLOSURE

1. All applicable state or federal permits shall be obtained before commencement of the development authorized by this Development Permit.

Figure 1 - Land Use Map



Figure 2 - Zoning Map

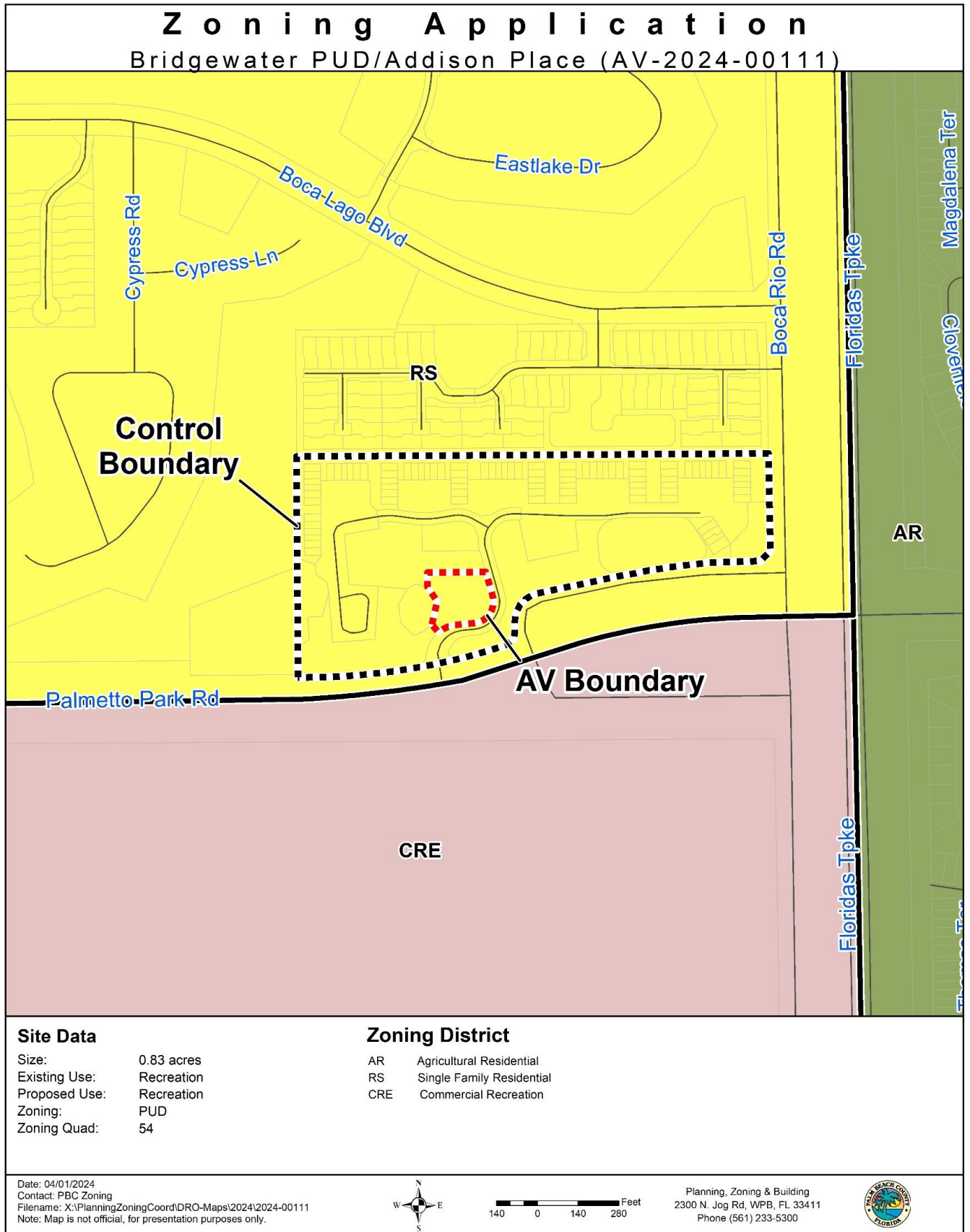


Figure 3 – Survey dated 03/07/2024:

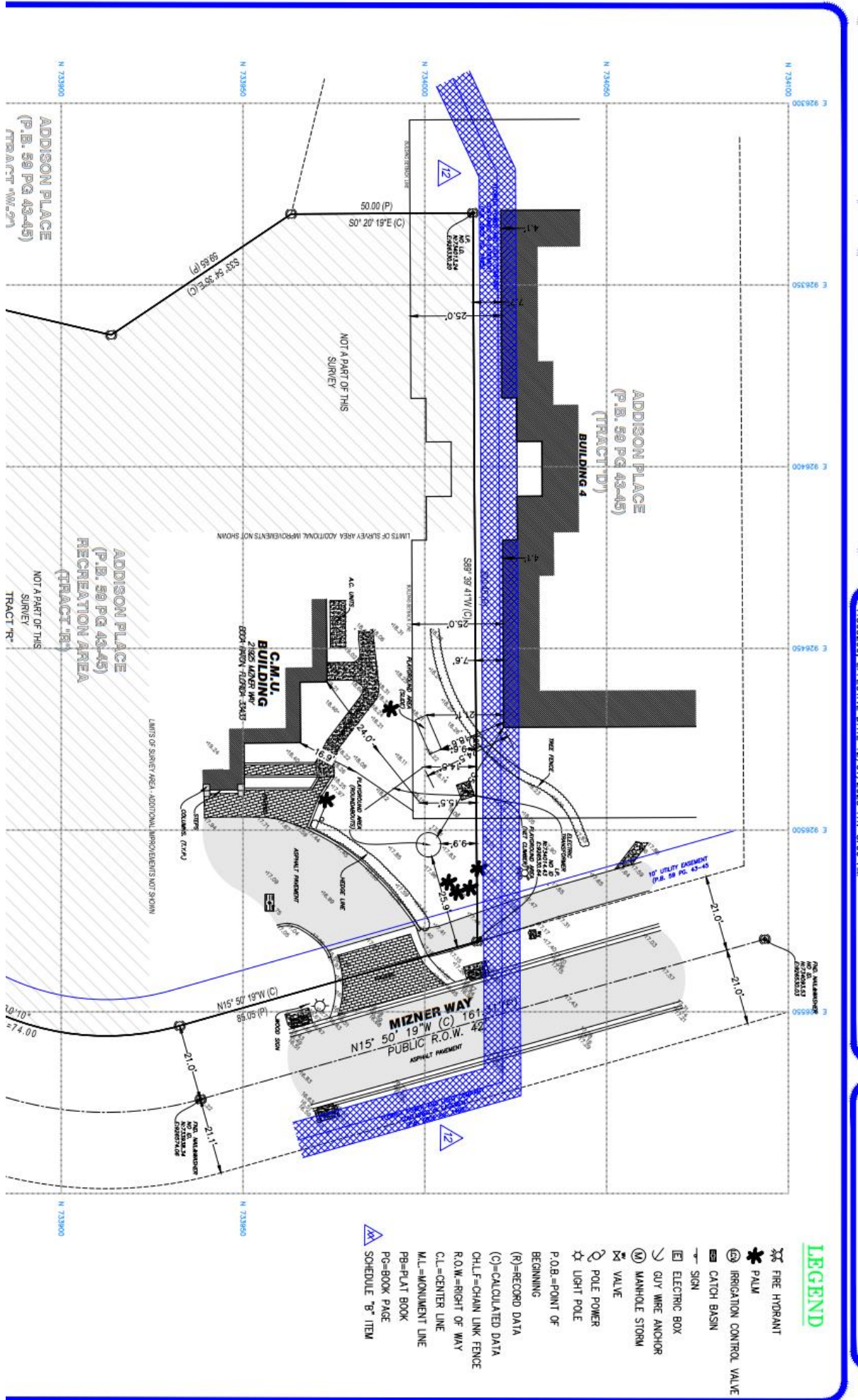


Exhibit D – Applicant’s Justification Statement dated June 24, 2022 – Type 2 Variance:



ATTORNEYS AT LAW

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Tampa
Washington, DC
West Palm Beach

Justification Statement

Location:

Site located at 21925 Mizner Way which is located on the north side of Palmetto Park Road approximately 0.225 miles west of Boca Rio Road.

Background:

The play equipment which is the subject of this variance request was installed for the community without building permit approval sometime in the later part of 2018 where for the first time it appears on papa aerals. This activity was cited by code enforcement on August 12, 2022, C-2022-04250018. A permit for permission to install the equipment has been applied for via PR-2023-017864-0000. Subsequently this application was filed to address the needed setback relief.

Request Summary:

The applicant is seeking a type 1 variance to establish reduced separations and setbacks required by Table 5.B.1.A Note 4. Note 4 requires a minimum separation between a recreation amenity to a Multifamily or CLF structure or the property line of an adjacent residential unit. In this case, both criteria must be met. This means that a 25' separation must be provided to an adjacent MF structure and a 25' setback must be maintained from the property line. In this case, relief is needed to reduce the required 25' separation from the closest play equipment by 6.4' to establish a minimum separation for all play equipment of 18.6' and reduce the required 25' setback from the closest play equipment by 15.4' to establish a minimum setback for all play equipment of 9.6'. (See the separation and setback chart for the existing play equipment below)

135143116.1

Carlton Fields, P.A.

Carlton Fields, P.A. practices law in California through Carlton Fields, LLP.

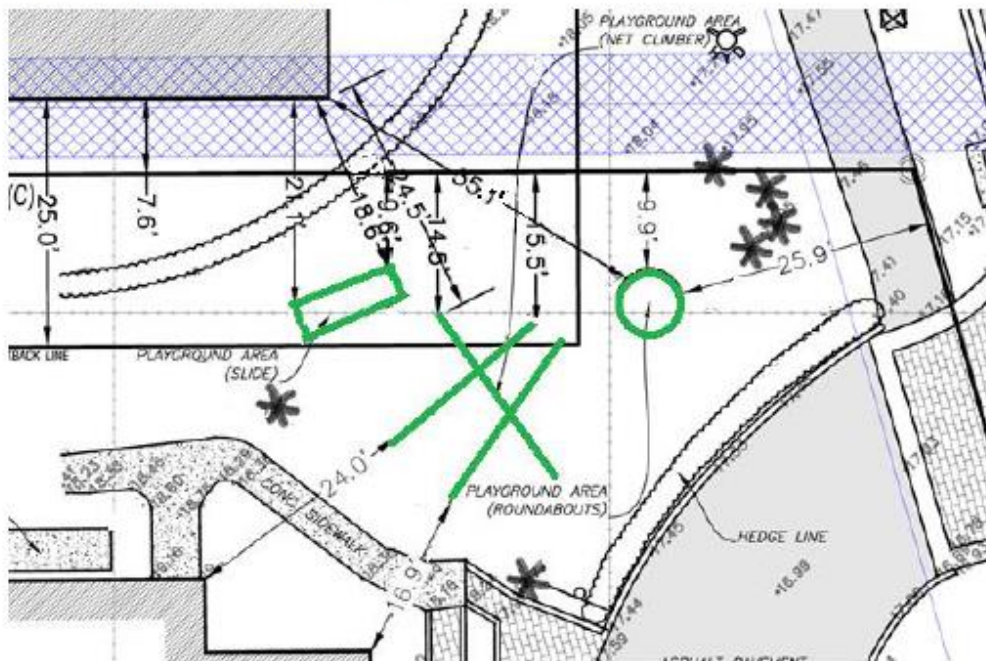
Existing Play Equipment Separation and Setback Tables:

Separation Table			
Play Equipment	Separation Required	Separation Provided	Variance
Slide*	25	18.6'	6.4' reduction
Net Climber	25	24.5'	0.5' reduction
Roundabout	25	35.1'	N. A

Setback Table			
Play Equipment	Setback Required	Setback Provided	Variance
Slide*	25	18.6'	6.4' reduction
Net Climber	25	14.5'	10.5' reduction
Roundabout	25	9.9'	15.1' reduction

* Note: Closest Equipment with largest requested reduction.

Existing Playground Equipment Locations:



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Administrative Variance Standards:

- 1) **Special conditions and circumstances exist that are peculiar to the parcel of land, building or structure that are not applicable to other parcels of land, structures or buildings in the same zoning district.**

The project was originally approved and built nearly 40 years ago in the 1980s before these requirements were codified by ordinances 2014-001 and 2021-06). Furthermore, this is the only area within the recreation tract that can accommodate the play equipment presently being used by the community. This location of the Recreation Tract is oddly shaped with limited ability to provide the required separations and setbacks. At some point in late 2018, the play equipment was installed without permits and it has been used and enjoyed by the community since then. Since the PUD predated this requirement there is no other place to move or install this equipment. This together with the fact that this entire rental community PUD is owned, operated, and controlled as a single owner therefore no internal impacts on residents. The play equipment is setback into the property beyond the minimum setbacks so no impacts on surrounding properties will be realized if the equipment is allowed to remain in place.

- 2) **Special circumstances and conditions do not result from the actions of the Applicant.**

The odd shape of the recreation tract makes it difficult, if not impossible to locate play equipment within the recreation tract and comply with code. Play equipment of this type is normal and customary to similar residential developments and it serves as a valuable onsite service to the residents of the rental community.

- 3) **Granting the variance shall not confer upon the Applicant any special privilege denied by the comprehensive plan and this code to other parcels of land, buildings or structures in the same zoning district.**

The variance request as applied to this older vested PUD development will not convey any special privileges that are denied by the comprehensive plan and this code to other parcels of land, buildings or structures in the same zoning district.

- 4) **Literal interpretation and enforcement of the terms and provisions of this code would deprive the Applicant of rights commonly enjoyed by other parcels of land in the same zoning district and would work an unnecessary and undue hardship.**

A literal interpretation would prevent the PUD from providing playground equipment that is typical to multi-unit residential developments for their residents and children to use.

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- 5) **Grant of variance is the minimum variance that will make possible the reasonable use of the parcel of land, building or structure.**

Given the odd shape of the recreation parcel and the limited ability to locate this equipment elsewhere on site, this is the minimum variance that would allow the play equipment to be permitted in its present location.

- 6) **Grant of the variance will be consistent with the purposes, goals, objectives, and policies of the comprehensive plan and this code.**

The variance if approved will be consistent with the codes' intent to provide a buffer between residences and recreational play equipment and the proposed reductions in both minimum setbacks and separations will be mitigated by an 8-foot-tall solid hedge that provides a 100% opaque screening separating the play equipment from the adjacent residential buildings.

- 7) **The grant of the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.**

This variance to reduce the minimum setbacks and separation from commonly owned property will not be detrimental to the public welfare in any way.

Photos:



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VIOLATION BACKGROUND:

00-42-47-20-15-001-0000

**21925 Mizner Way
Boca Raton, FL 33433**

C-2022-04250018

Listed Items in Violation:

- 1) 2.A.6.B.4 Unified Land Development Code: More specifically, there are signs that do not appear on the approved site plan.
- 2) 8.E Unified Land Development Code: More specifically, there is a large sign on the east side of the property facing Boca Rio that does not appear to have a valid building permit.
- 3) 105.4.1 PBC Amendments to FBC 7th Ed. (2020): More specifically, permit #B-2016-015022-0000 Y Accessory Structure - Mis has become inactive or expired.
- 4) 105.4.1 PBC Amendments to FBC 7th Ed. (2020): More specifically, permit # B-2016-015019-0000 Y Accessory Structure - Mis has become inactive or expired.
- 5) 105.1 PBC Amendments to FBC 7th Ed. (2020): More specifically, playground equipment has been erected or installed without a valid building permit.

Agreed Order Settlement Agreement # C-2022-04250018

Violation by Number with the Corrective Actions Listed

135143116.1

1) 2.A.6.B.4 Unified Land Development Code: More specifically, there are signs that do not appear on the approved site plan.

- **Violation Corrected** - Boca Rio Sign was removed from the site in compliance with the approved site plan October 2023.

2) 8.E Unified Land Development Code: More specifically, there is a large sign on the east side of the property facing Boca Rio that does not appear to have a valid building permit.

- **Violation Corrected** - Boca Rio Sign was removed from the site to correct the violation October 2023.

3) 105.4.1 PBC Amendments to FBC 7th Ed. (2020): More specifically, permit #B-2016-015022-0000 Y Accessory Structure - Mis has become inactive or expired.

- **Violation Corrected - Prior Inactive Permit Closed - Duplicate records for B-2016-0150022-0000 existed and showed the permit both complete and expired. Therefore, the contractor had the building department reinstate the inactive permit to allow for a final reinspection of the work to close permit file. This permit renewal was done on 1/4/24 and the final inspection approval was received on 1/19/24.**

4) 105.4.1 PBC Amendments to FBC 7th Ed. (2020): More specifically, permit # B-2016-015019-0000 Y Accessory Structure - Mis has become inactive or expired.

- **Violation Corrected - Prior Inactive Permit Closed - Prior contractor contacted building department to show proof of final inspections and duplicate files records in the building department record for B-2016-0150019-0000 had some records closed while others remained inactive. Therefore, the building department reinstated the inactive permit to allow for a reinspection of the work to close permit file. This renewal was done on 1/5/24 and the final inspection approval was received on 1/16/24.**

5) 105.1 PBC Amendments to FBC 7th Ed. (2020): More specifically, playground equipment has been erected or installed without a valid building permit.

- **Ongoing Corrective Action Permits Pending County Review** - Contacted zoning on 12/6/2022 was referred to gather information and contact Imene by Monica Cantor. Follow up by contacting Imene Haddad by phone who instructed us to submit for building permits first for the play equipment and that staff would comment once they reviewed the permit request. I again connected with Imene Haddad on 2/16 /23, by email with details of the issues and was told she would get back to me.

The playground equipment permit was applied for on 4/25/23 see PR-2023-017864-0000 for details.

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Contacted Carlos Torres for help late July 23. Contacted by Imene Haddad via email on July 25, 2023, and was asked to submit a pre application with back up. The requested pre application was submitted to Imene Haddad on July 25, 2023. After the submittal we continued to exchange email through September to determine the applicable code requirements and how they should be applied to this previous approval. Legal Counsel became involved on 9.11.23 and sent a request to Zoning Director to get a ruling on interpretation. We were directed back to Monica Cantor for clarification on the current interpretation of code on 11.20.23.

Staff provided a resolution to code interpretation and directed applicant to seek a Type I Variance AV 2024-0011 on 11.29.23.

Applicant submitted the Type 1 Variance application on 12.20.23 and we received the sufficiency notice that the application has been accepted on 01.03.24. and the team remains ready to address comments as they become available.

PROJECT HISTORY

Petition 1983-0076

Request: Rezone and SE for PUD

Approved: July 28, 1983

R1983-1099 rezone for AR to RS & R1983-1100 SE PUD

ZZR-2016-02090

Request Modification of FSP to account for minor changes to parking area in front of an existing clubhouse for the Addison Apartments. Submitted in concert to a building permit PR-2016-015020-0000

Approved: December 8, 2016

AV-2024-00111

Request: Reduce setbacks for play equipment

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