

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

ZONING COMMISSION STANDALONE VARIANCE STAFF REPORT

Application No.: SV-2022-01890
Application Name: GLMC Warehouse
Control No./Name: 2001-50052
Applicant(s): GLMC Group LLC
Owner(s): GLMC Group LLC
Agent(s): Dunay, Miskel and Backman, LLP - Beth Schrantz
Dunay, Miskel and Backman, LLP - Scott Backman
Telephone No.: (786) 763-0565, (561) 368-7700
Project Manager: Werner Vaughan, Professional Engineer

Title: a Subdivision Variance **Request:** to allow access from the existing 40-foot easement on 0.71 acres.

APPLICATION SUMMARY: Petition of Dunay, Miskel & Backman, LLP, on behalf of GLMC Group, LLC, requesting a variance from the requirement that access shall be by a street of suitable classification and construction as established by the subdivision regulations and to allow access from the existing 40 foot private ingress/egress easement. The applicant is proposing to develop this property as a small warehouse with office.

SITE DATA:

Location:	On the west side of Thompson Road, south of Hypoluxo Road
Property Control Number(s)	00-43-45-08-00-002-0120
Existing Land Use Designation:	Commercial High, with an underlying MR-5 (CH/5)
Existing Zoning District:	General Commercial District (CG)
Acreage:	0.71 acres
Tier:	URBAN/SUBURBAN
Overlay District:	N/A
Neighborhood Plan:	N/A
CCRT Area:	N/A
Municipalities within 1 Mile	Boynton Beach, Lantana
Future Annexation Area	Boynton Beach
BCC District	District 2, Mayor Greg Weiss

STAFF RECOMMENDATION: Staff recommends **denial** of the request based upon the following application failing to meet the standards enumerated in Article 2, Section 2.B.3.E of the Palm Beach County Unified Land Development Code (ULDC), which an applicant must meet before the Zoning Commission who may authorize a variance. If the request is approved by the Zoning Commission, the request will be subject to the standard Zoning Conditions of Approval as indicated in Exhibit C.

PUBLIC COMMENT SUMMARY: At the time of publication, staff received 6 contacts from the public, including 4 in opposition to this project.

PROJECT HISTORY:

The subject property currently has a Future Land Use designation of Commercial High (CH/5) within the Commercial General (CG) Zoning District. The site is under Unincorporated Palm Beach County jurisdiction and is presently vacant.

SURROUNDING LAND USES:

NORTH:

FLU Designation: Commercial Low (CL/5)
Zoning District: Commercial General (CG)
Supporting: Commercial (parking lot)
(Discount Auto Parts, Control No. 1996-00002)

SOUTH:

FLU Designation: Multi-Family Residential (MR-5)
Zoning District: Residential Single-Family (RS)
Supporting: Single-Family Residential
(No Control Name, Control No. N/A)

EAST:

FLU Designation: Commercial Low (CL/5) / Multi-Family Residential (MR-5)
Zoning District: Commercial General (CG) / Residential Single-Family (RS)
Supporting: Commercial / Residential
(Discount Auto Parts, Control No. 1996-00002 / Lewis Property, Control No. 1995-00067)

WEST:

FLU Designation: City of Boynton (LDR)
Zoning District: City of Boynton (PUD)
Supporting: Single-Family Residential
(No Control Name, Control No. N/A)

SUBDIVISION VARIANCE SUMMARY

ULDC Article	Required	Proposed	Variance
11.E.2.A.2 Minimum Legal Access	80-foot right-of-way (ROW) Non-Plan Collector	40-foot private Ingress/Egress easement	40 feet in width and access from an easement from local road

FINDINGS:

Subdivision Variance Standards:

Pursuant to the Unified Land Development Code (ULDC), Article 11, Chapter E.2.A.2., each lot shall abut a street of suitable classification to provide said lot with legal access consistent with the standards set forth in Table 11.E.2.A-2, Chart of Minor Streets. The code requires that those parcels with a commercial designation provide legal access through a non-plan collector road. This variance application is to request site access from Thompson Road, which is a private 40-foot private Ingress/Egress Easement.

The Palm Beach County ULDC Article 2.B.7.E. requires a statement of special reason or basis for the variance demonstrating all seven criteria listed below are satisfied to qualify for this variance:

- 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: There are special conditions and circumstances that exist that are peculiar to the Property that are not applicable to other parcels of land, structures or buildings in the CG district. The Property has retained the same CG zoning since before the adoption of the Comprehensive Plan in 1989, and has been envisioned for the development of intensive commercial uses providing a wide range of goods and services. The existing access to the Property is via a non-platted forty-foot (40’) road easement, rather than via an eighty-foot (50’) local commercial right-of-way as required by the current requirements of the Unified Land Development Code (“ULDC”). The road easement provides access via a developed Commercial property to the north, which Applicant does not own. Applicant does not have control over the area leading from the public Hypoluxo Road right-of-way to the Property and therefore cannot upgrade the access to comply with today’s standards. As such, Applicant is unable to provide access via an eighty foot (80’) right-of-way to be in compliance with today’s ULDC requirement. Typically, the County would require any commercial development to provide a right-of-way dedication to provide a public road built to a non-plan collector standard during the development review and approval process in order to ensure that adjacent parcels have sufficient legal access. It is also important to note that the property located across Thompson Road to the east was originally zoned for commercial uses, consistent with the intended use of the Property. The County approved the rezoning of that property from commercial to residential through approval of Resolution R-95- 1725 without requiring right-of-way conveyance for

the existing commercial property. Considering that existing access is provided via a road easement through an adjacent commercial property and that the area has been intended for commercial development since at least the 1980s there is a special condition and circumstance that is peculiar to the Property and is not normally applicable to other lands within the CG zoning district

Staff Response: CORRECT. 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 building in the same district.

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

Applicant's Response: The special circumstances and conditions do not result from the actions of the Applicant. As mentioned above, the property has been designated CH and zoned CG since prior to the adoption of the Comprehensive Plan in 1989 and has been in its existing configuration since at least 1969. Furthermore, Applicant was not a party to the unrecorded plat which divided the properties along this roadway, nor was Applicant an original party to the 40-foot-wide road easement. Lastly, Applicant was not involved in the approval for the commercial development to the north or rezoning to the east that did not provide a right-of-way dedication to the non-plan collector standard. As such, the special circumstances and conditions that created the existing access configuration do not result from the actions of Applicant.

Staff Response: CORRECT. The special circumstances and conditions do not result from the actions of the Applicant.

c) 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.

Applicant's Response: 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 CG district.
The Property is zoned CG and has legal access by virtue of a 40-foot road easement. While the property has legal access, such access width is insufficient per the current ULDC standards. The granting of the variance request would not confer upon the Applicant any special privileges that would be denied to other commercial properties. It is not possible for Applicant to provide the access as required by the ULDC because of the previously established easement and the lack of alternate accessible roads to access the Property. The same consideration would be provided to any other property under similar constraints.

Staff Response: CORRECT. Granting the variance will 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.

d) Literal interpretation and enforcement of the terms and provisions of the ULDC would deprive the Petitioner of rights commonly enjoyed by other parcels of land in the same zoning district, and would work an unnecessary and undue hardship.

Applicant's Response: The literal interpretation and enforcement of the terms and provisions of the ULDC would deprive the Applicant of rights commonly enjoyed by other commercial parcels of land in the CG zoning district, and would cause unnecessary and undue hardship. The literal interpretation of this provision of the ULDC would prevent any commercial development of the Property, which is currently sitting vacant. According to Table 11.E.2.A-2, commercial legal access along a road easement is not an enumerated possibility. This table allows commercial legal access to be obtained from a non-plan collector, marginal access, or local commercial street. When the property to the north was developed in 1996, the County did not require that project to dedicate a public roadway, which would have connected the Property to Hypoluxo Road. As such, literal interpretation and enforcement of the terms and provisions of the ULDC would deprive the Applicant of rights commonly enjoyed by other parcels of land in the CG zoning district and would work an unnecessary and undue hardship.

Staff Response: CORRECT. Literal interpretation of the code would deprive the Petitioner of rights commonly enjoyed by other parcels of land in the same zoning district.

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: The variance request is the minimum variance that will allow the Applicant to reasonably use the Property. Applicant is simply seeking to allow access to the Property via the existing road easement. The road easement is already used by a commercial business to the north and based on the enclosed traffic study, the proposed project will be a low traffic generator. Further, Applicant has reached out to the adjacent property owner to the north in an attempt to get approval for a shared access via Thompson Road; however, the adjacent owner declined to move forward with a shared access. As such, the requested variance is the minimum variance that will make possible the reasonable use of the Property.

Staff Response: INCORRECT. Granting this variance, to provide access from a 40-foot private ingress/egress easement, is not the minimum variance needed for the reasonable use of the property. The minimum variance will be to construct a road to non-plan collector standards within the existing 40-foot easement.

f) Granting the variance will be consistent with the purposes, goals, objectives, and policies of the Comprehensive Plan and this code.

Applicant's Response: Granting the variance request will be consistent with the purposes, goals, objectives, and policies of the Comprehensive Plan and the ULDC. The Commercial High future land use includes a wide range of uses, intended to serve a community and/or regional commercial demand. The CG zoning district is intended to encourage the development of intensive commercial uses, providing a wide range of goods and services, with access from a Collector or Arterial Street and services a consumer market of at least a three-mile radius. Approval of this Subdivision Variance will allow for the development of the Property for the commercial use envisioned by the existing land use and zoning. The request for this variance is consistent with the Comprehensive Plan and ULDC.

Staff Response: INCORRECT. Granting the variance will not be consistent with the purposes, goals, objectives and policies of the Comprehensive Plan and this code. As stated above, the CG zoning district requires access from a Collector or Arterial Street. Also, Pursuant to the Unified Land Development Code (ULDC), Article 11, Chapter E.2.A.2., each lot shall abut a street of suitable classification to provide said lot with legal access consistent with the standards set forth in Table 11.E.2.A-2, Chart of Minor Streets. The code requires that those parcels with a commercial designation provide legal access through a non-plan collector or local commercial road. The existing road is a 40-foot private ingress/egress easement and does not meet the minimum requirements of the code. Additionally the existing roadway has an 18-foot wide pavement section at its narrowest point, and the code requires 24-feet.

g) Granting the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Applicant's Response: Granting the variance will not be injurious to the area or otherwise detrimental to the public welfare. As noted above, the relief sought is to allow access via the existing 40-foot road easement to continue to provide legal access to the property and allow the development of this vacant, underutilized land. This affords the Applicant the ability to commercially develop the Property and provide a beneficial use to the County. As explained above, the roadway is existing, and Applicant does not have the property rights to expand or dedicate the roadway necessary to be consistent with today's ULDC requirements. Furthermore, the roadway has been deemed adequate for the adjacent commercial property to the north and should continue to be sufficient for the Property. As such, granting the variance request will not be injurious to the surrounding area or otherwise be detrimental to the public welfare.

Staff Response: INCORRECT. Granting of this variance would not be detrimental to the public welfare, however the existing roadway within this private ingress/egress easement, does not meet the minimum design standards for a commercial road; adding commercial vehicles to the existing road would be injurious. Should this variance be approved, the application shall be conditioned to improve the road to non-plan collector standards from the intersection of Hypoluxo Road and Thompson Road to the proposed driveway connection plus a transition to the existing roadway section.

CONDITIONS OF APPROVAL

EXHIBIT C – Subdivision Variance - Standalone

ENGINEERING

1. Prior to the issuance of the Certificate of Occupancy, the Property Owner shall improve Thompson Road from Hypoluxo Road to the proposed driveway connection and transition to the existing roadway section to be consistent with Palm Beach County standards for a non-plan collector/local commercial roadway. This construction shall be concurrent with the paving and drainage improvements for the site. Any and all costs associated with the construction shall be paid by the Property Owner. These costs shall include, but are not limited to, utility relocations and acquisition of any additional required right-of-way. (CO: MONITORING - Engineering)

COMPLIANCE

1. In Granting this Approval, the Zoning Commission 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 Commission for review under the compliance Condition of this Approval. (ONGOING: MONITORING - Zoning)

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, 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: MONITORING - Zoning)

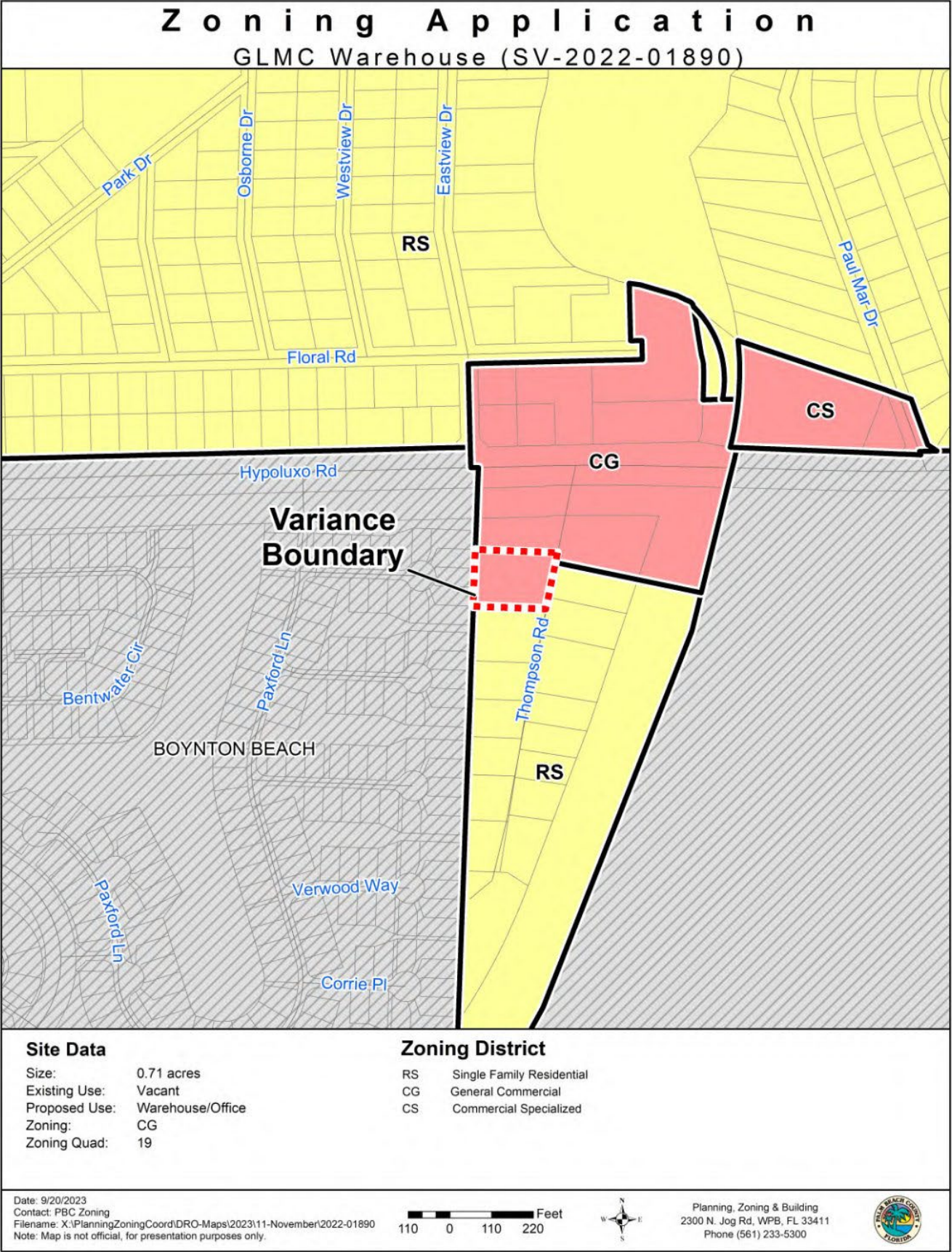
DISCLOSURE

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



Zoning Commission
SV-2022-01890
GLMC Warehouse

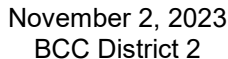


Exhibit D – Disclosure of Ownership

DISCLOSURE OF OWNERSHIP INTERESTS – PROPERTY

[TO BE COMPLETED AND EXECUTED BY THE PROPERTY OWNER(S) FOR EACH APPLICATION FOR COMPREHENSIVE PLAN AMENDMENT OR DEVELOPMENT ORDER]

TO: PALM BEACH COUNTY PLANNING, ZONING AND BUILDING EXECUTIVE DIRECTOR, OR HIS OR HER OFFICIALLY DESIGNATED REPRESENTATIVE

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared Leszek Grzanka, hereinafter referred to as "Affiant," who being by me first duly sworn, under oath, deposes and states as follows:

- 1. Affiant is the [] individual or [x] owner of GLMC Group, LLC [position - e.g., president, partner, trustee] [name and type of entity - e.g., ABC Corporation, XYZ Limited Partnership] that holds an ownership interest in real property legally described on the attached Exhibit "A" (the "Property"). The Property is the subject of an application for Comprehensive Plan amendment or Development Order approval with Palm Beach County.
- 2. Affiant's address is: 6164 Shadow Tree Lane, Lake Worth, Florida, 33463
- 3. Attached hereto as Exhibit "B" is a complete listing of the names and addresses of every person or entity having a five percent or greater interest in the Property. Disclosure does not apply to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.
- 4. Affiant acknowledges that this Affidavit is given to comply with Palm Beach County policy, and will be relied upon by Palm Beach County in its review of application for Comprehensive Plan amendment or Development Order approval affecting the Property. Affiant further acknowledges that he or she is authorized to execute this Disclosure of Ownership Interests on behalf of any and all individuals or entities holding a five percent or greater interest in the Property.
- 5. Affiant further acknowledges that he or she shall by affidavit amend this disclosure to reflect any changes to ownership interests in the Property that may occur before the date of final public hearing on the application for Comprehensive Plan amendment or Development Order approval.
- 6. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

7. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief, it is true, correct, and complete.

FURTHER AFFIANT SAYETH NAUGHT.



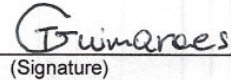
Leszek Grzanka, Affiant
(Print Affiant Name)

NOTARY PUBLIC INFORMATION:

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of [] physical presence or []
online notarization, this 15th day of NOVEMBER, 2022 by
Leszek Grzanka (name of person acknowledging) He/she is personally known
to me or has produced (type of identification) as
identification and did not take an oath (circle correct response).

(Name type, state, and print clearly)



(Signature)

My Commission Expires on

8/3/24

NOTARY'S SEAL OR STAMP

EXHIBIT "A"**PROPERTY**

THAT PART OF SECTION 8, TOWNSHIP 45 SOUTH, RANGE 43 EAST, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 8, THENCE S. 02°41'15" W ALONG THE QUARTER SECTION LINE, A DISTANCE OF 190.08 FEET, TO THE ACTUAL POINT OF BEGINNING OF THE TRACT OF LAND TO BE DESCRIBED; THENCE CONTINUE S. 02°41'15" W., A DISTANCE OF 150 FEET; THENCE S. 87°18'45" E., A DISTANCE OF 192.06 FEET; THENCE N. 12°20' E., A DISTANCE OF 152.15 FEET; THENCE N. 87°18'45" W., A DISTANCE OF 217.56 FEET TO THE ACTUAL POINT OF BEGINNING. (ALSO KNOWN AS TRACT 2 AND THE NORTH 50 FEET OF TRACT 3, OF THOMPSON SUBDIVISION, AN UNRECORDED PLAT.)

RESERVING UNTO THE GRANTORS, THEIR HEIRS, REPRESENTATIVES AND ASSIGNS, AN EASEMENT, IN COMMON WITH GRANTEEES, THEIR HEIRS, REPRESENTATIVES AND ASSIGNS, OVER, ACROSS, UNDER AND UPON THE EASTERLY 20 FEET OF THE ABOVE DESCRIBED PARCEL, AS MEASURED AT RIGHT ANGLES TO THE EASTERLY LINE OF SAID PREMISES, FOR ROAD RIGHT-OF-WAY AND PUBLIC UTILITIES PURPOSES.

TOGETHER WITH A PERPETUAL EASEMENT FOR THE PURPOSE OF INGRESS AND EGRESS TO AND FROM THE ABOVE DESCRIBED PARCEL OF REAL PROPERTY, SAID EASEMENT TO BE IN COMMON WITH GRANTORS, THEIR HEIRS, LEGAL REPRESENTATIVES AND ASSIGNS, OVER, ACROSS AND UPON A TRIP OF LAND 0 FEET IN WIDTH, IN SECTION 8, TOWNSHIP 45 SOUTH, RANGE 43 EAST, THE CENTER-LINE BEING DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTH 1/4 CORNER OF SAID SECTION 8; THENCE SOUTH 02°-41-15"W ALONG THE QUARTER SECTION LINE, A DISTANCE OF 40.08 FEET, TO A POINT IN THE SOUTH RIGHT-OF-WAY LINE OF LAKE WORTH DRAINAGE DISTRICT LATERAL NO. 18; THENCE NORTH 89°-04-23" EAST ALONG SAID RIGHT-OF-WAY LINE (BEING PARALLEL WITH AND 40 FEET SOUTH OF, AS MEASURED AT RIGHT ANGLES TO, THE NORTH LINE OF SAID SECTION 8), A DISTANCE OF 246.17 FEET, TO THE POINT OF BEGINNING OF THE CENTER-LINE TO BE DESCRIBED; THENCE SOUTH 12°-20' WEST, A DISTANCE OF 541.84 FEET; THENCE SOUTH 09°-45'-05" WEST, A DISTANCE OF 484.16 FEET, AND THERE TERMINATING.

EXHIBIT "B"

DISCLOSURE OF OWNERSHIP INTERESTS - PROPERTY

Affiant must identify all entities and individuals owning five percent or more ownership interest in the Property. Affiant must identify individual owners. For example, if Affiant is an officer of a corporation or partnership that is wholly or partially owned by another entity, such as a corporation, Affiant must identify the other entity, its address, and the individual owners of the other entity. Disclosure does not apply to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

Name	Address
Leszek Grzanka	6164 Shadow Tree Lane Lake Worth, FL 33463

Exhibit E – Applicant’s Justification Statement dated August 28, 2023



DUNAY
MISKEL
BACKMAN

LLP

Gary Dunay

Bonnie Miskel

Scott Backman

Eric Coffman

Hope Calhoun

Dwayne Dickerson

Ele Zachariades

Matthew H. Scott

Christina Bilenki

David F. Milledge

Jeffrey Schneider

Kristen Weiss

Sara Thompson

GLMC WAREHOUSE
Statement of Use and Justification for Subdivision Variance for Legal Access
Submitted: December 21, 2022
Resubmitted: February 21, 2023
Resubmitted: August 28, 2023

INTRODUCTION

GLMC Group, LLC (“Applicant”) is the owner of a +/- 0.71-acre parcel within unincorporated Boynton Beach (the “Property”), which is located south of Hypoluxo Road on the west side of Thompson Road, an unplatted road which is subject to a 40-foot road easement. The Property is designated within the General Commercial (CG) zoning district and has a Commercial High, 5 units per acre (CH/5) future land use. The property has maintained this zoning district since before the adoption of the Comprehensive Plan 1989. In addition, Palm Beach County has confirmed that the property is a legal lot of record that has existed in its current configuration since before the adoption of the County’s plat requirement in accordance with Unified Land Development Code (ULDC) Section 11.A.8.B.

REQUEST

At this time, Applicant proposed to develop the Property as a small warehouse with office, which is permitted subject to Development Review Officer (“DRO”) approval in the CG zoning district. However, in order to utilize the Property for the intended commercial uses, a Subdivision On behalf of the Applicant, Dunay, Miskel, and Backman, LLP (“Agent”) respectfully submits this application requesting a Subdivision Variance approval to allow access to the Property via the existing 40-foot-wide road easement in consideration of the fact that the Property has existed with commercial land use and zoning with the existing access.

TRAFFIC

The anticipated traffic impact for the Project is 16 trips per day (calculated as 1.74 trips per 1000 square feet).

SUBDIVISION VARIANCE CRITERIA

In order to develop the Property, Applicant is providing access via the existing 40-foot road easement and therefore, Applicant is requesting relief from the ULDC requirement pursuant to ULDC Section 2.B.7.E.6. as follows:

Subdivision Variance from Article 11, Table 11.E.2.A-2 to allow access from a 40-foot-wide road easement in lieu of the minimum access from an 80-foot wide publicly dedicated Local Commercial right-of-way

Consistent with ULDC 2.B.7.E, the proposed subdivision satisfies the following criteria:

- (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 (uniqueness).

RESPONSE: *There are special conditions and circumstances that exist that are peculiar to the Property that are not applicable to other parcels of land, structures or buildings in the CG district. The Property has retained the same CG zoning since before the adoption of the Comprehensive Plan in 1989, and has been envisioned for the development of intensive commercial uses providing a wide range of goods and services. The existing access to the Property is via a non-platted forty-foot (40') road easement, rather than via an eighty-foot (50') local commercial right-of-way as required by the current requirements of the Unified Land Development Code ("ULDC"). The road easement provides access via a developed Commercial property to the north, which Applicant does not own. Applicant does not have control over the area leading from the public Hypoluxo Road right-of-way to the Property and therefore cannot upgrade the access to comply with today's standards. As such, Applicant is unable to provide access via an eighty foot (80') right-of-way to be in compliance with today's ULDC requirement. Typically, the County would require any commercial development to provide a right-of-way dedication to provide a public road built to a non-plan collector standard during the development review and approval process in order to ensure that adjacent parcels have sufficient legal access. It is also important to note that the property located across Thompson Road to the east was originally zoned for commercial uses, consistent with the intended use of the Property. The County approved the rezoning of that property from commercial to residential through approval of Resolution R-95-1725 without requiring right-of-way conveyance for the existing commercial property. Considering that existing access is provided via a road easement through an adjacent commercial property and that the area has been intended for commercial development since at least the 1980s there is a special condition and circumstance that is peculiar to the Property and is not normally applicable to other lands within the CG zoning district.*

- (b) Special circumstances and conditions do not result from the actions of the Applicant (not self-created condition).

RESPONSE: *The special circumstances and conditions do not result from the actions of the Applicant. As mentioned above, the property has been designated CH and zoned CG since prior to the adoption of the Comprehensive Plan in 1989 and has been in its existing configuration since at least 1969. Furthermore, Applicant was not a party to the unrecorded plat which divided the properties along this roadway, nor was Applicant an original party to the 40-foot-wide road easement. Lastly, Applicant was not involved in the approval for the commercial development to the north or rezoning to the east that did not provide a right-of-way dedication to the non-plan collector standard. As such, the special circumstances and conditions that created the existing access configuration do not result from the actions of Applicant.*

- (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 (no special privilege).

RESPONSE: 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 CG district. The Property is zoned CG and has legal access by virtue of a 40-foot road easement. While the property has legal access, such access width is insufficient per the current ULDC standards. The granting of the variance request would not confer upon the Applicant any special privileges that would be denied to other commercial properties. It is not possible for Applicant to provide the access as required by the ULDC because of the previously established easement and the lack of alternate accessible roads to access the Property. The same consideration would be provided to any other property under similar constraints.

- (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 (undue hardship).

RESPONSE: The literal interpretation and enforcement of the terms and provisions of the ULDC would deprive the Applicant of rights commonly enjoyed by other commercial parcels of land in the CG zoning district, and would cause unnecessary and undue hardship. The literal interpretation of this provision of the ULDC would prevent any commercial development of the Property, which is currently sitting vacant. According to Table 11.E.2.A-2, commercial legal access along a road easement is not an enumerated possibility. This table allows commercial legal access to be obtained from a non-plan collector, marginal access, or local commercial street. When the property to the north was developed in 1996, the County did not require that project to dedicate a public roadway, which would have connected the Property to Hypoluxo Road. As such, literal interpretation and enforcement of the terms and provisions of the ULDC would deprive the Applicant of rights commonly enjoyed by other parcels of land in the CG zoning district and would work an unnecessary and undue hardship.

- (e) Granting the variance is the minimum variance that will make possible the reasonable use of the parcel, building or structure (minimum variance).

RESPONSE: The variance request is the minimum variance that will allow the Applicant to reasonably use the Property. Applicant is simply seeking to allow access to the Property via the existing road easement. The road easement is already used by a commercial business to the north and based on the enclosed traffic study, the proposed project will be a low traffic generator. Further, Applicant has reached out to the adjacent property owner to the north in an attempt to get approval for a shared access via Thompson Road; however, the adjacent owner declined to move forward with a shared access. As such, the requested variance is the minimum variance that will make possible the reasonable use of the Property.

- (f) Granting the variance will be consistent with the purposes, goals, objectives, and policies of the Plan and this Code (intent of the Code).

RESPONSE: Granting the variance request will be consistent with the purposes, goals, objectives, and policies of the Comprehensive Plan and the ULDC. The Commercial High future land use includes a wide range of uses, intended to serve a community and/or regional commercial demand. The CG zoning district is intended to encourage the development of intensive commercial uses, providing a wide range of goods and services, with access from a Collector or Arterial Street and services a consumer market of at least a three-mile radius. Approval of this

Subdivision Variance will allow for the development of the Property for the commercial use envisioned by the existing land use and zoning. The request for this variance is consistent with the Comprehensive Plan and ULDC.

- (g) Granting the variance will not be injurious to the area involved or otherwise detrimental to the to the public welfare.

RESPONSE: Granting the variance will not be injurious to the area or otherwise detrimental to the public welfare. As noted above, the relief sought is to allow access via the existing 40-foot road easement to continue to provide legal access to the property and allow the development of this vacant, underutilized land. This affords the Applicant the ability to commercially develop the Property and provide a beneficial use to the County. As explained above, the roadway is existing, and Applicant does not have the property rights to expand or dedicate the roadway necessary to be consistent with today's ULDC requirements. Furthermore, the roadway has been deemed adequate for the adjacent commercial property to the north and should continue to be sufficient for the Property. As such, granting the variance request will not be injurious to the surrounding area or otherwise be detrimental to the public welfare.