

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



**ZONING COMMISSION VARIANCE
STAFF REPORT
11/07/2013**

APPLICATION NO.	CODE SECTION	REQUIRED	PROPOSED	VARIANCE			
ZV-2013- 01853	Article 16.C.1.E.2.a Prohibited Land Uses	In no case shall a new educational facility, be permitted at either end of a runway within an area that extends five statute miles in a direct line along the centerline of the runway, and which has a width of the length of one half of the runway.	A new educational facility, private school be permitted at either end of a runway within an area that extends five statute miles in a direct line along the centerline of the runway, and which has a width of the length of one half of the runway.	To allow a new educational facility, private school, to be permitted one third (1/3) statute mile on either end of a runway.			
SITUS ADDRESS:	2116 Lantana Rd Lake Worth 33462						
AGENT NAME & ADDRESS:	Jim Frogner Frogner Consulting, Inc. 3402 SE Clubhouse Pl Stuart FL 34997						
OWNER NAME & ADDRESS:	2116 Lantana Rd Lake Worth FL 33462						
PCN:	00-43-45-05-05-000-0010						
ZONING DISTRICT:	RS						
BCC DISTRICT:	03						
PROJECT MANAGER:	Carrie Rechenmacher, Senior Site Planner						
LEGAL AD:	ZV-2013-01853 <u>Title:</u> Resolution approving a Type II Variance - Standalone Request application of Living Word Lutheran Church (LCA) by Frogner Consulting, Inc., Agent. <u>Request:</u> to allow a General Day Care, to be permitted at either end of a runway, in an area that extends within five miles from the end of the airport runway <u>General Location:</u> South side of Lantana Road, 1/4 mile west of I-95 (LIVING WORD LUTHERAN CHURCH) (1975-00038)						
LAND USE:	INST	S/T/R: 05-45-43					
CONTROL #:	1975-00038						
LOT AREA:	3.32 acres +/-						
LOT DIMENSIONS:	Approximately 500 feet by 260 feet						
CONFORMITY OF LOT:	Yes	CONFORMITY OF ELEMENT:	N/A				

TYPE OF ELEMENT:	Site Location	ELEMENT SIZE:	N/A
BUILDING PERMIT #:	None	NOTICE OF VIOLATION:	No
CONSTRUCTION STATUS:	Existing Church		
APPLICANT REQUEST:	to allow a General Day Care, to be permitted at either end of a runway, in an area that extends within five miles from the end of the airport runway		

RECOMMENDATION: Staff recommends **denial** of the requests, based upon the following application of 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.

Should the Zoning Commission approve the Type II Variance, staff recommends the approval be subject to the Conditions of Approval as indicated in Exhibit C, or as determined by the Zoning Commission.

STAFF SUMMARY

APPLICATION SUMMARY: Proposed is a Type II Variance for the Living Word Lutheran Church. The 3.32-acre site was last approved on July 25, 1985 by the Board of County Commissioners to expand an existing Place of Worship. The subject site is currently approved for a 380-seat Place of Worship and accessory Sunday School classrooms. The applicant proposes a General Daycare for 60 children subject to approval of the Type II Variance request.

The applicant is proposing to deviate from the Unified Land Development Code Article 16.C.1.E.2.a. which prohibits a new Educational Facility, Limited or General Day Care, or a Public or Private School to be permitted at either end of a runway within an area that extends five statute miles in a direct line along the centerline of the runway. The proposed Day Care Facility will extend approximately one third (1/3) statute miles in a direct line along the centerline of runway 15/33 of the Palm Beach County Park Airport (aka Lantana Airport). One (1) access point to the site will remain from Lantana Road and one (1) access and one egress only from Pine Drive.

PROJECT HISTORY

On May 6, 1975, the 3.89-acre site was approved for a Special Exception to allow a Church including a Sunday School Class Room Facility by Resolution R-1975-295 (Control 1975-38).

On July 25, 1985, a Special Exception was approved to expand the site plan for the church by Resolution R-1985-1429 (Control 1975-38). The Final Approved Site Plan dated August 28, 1985 indicates a total 11,429 square foot Place of Worship with a Phase 4 and Phase 5 that was never completed or constructed.

On May 25, 2012, the applicant submitted a Requested Use for a 3,459 square foot General Day Care for 60 children. The application was withdrawn on October 29, 2012 when it was determined the Day Care facility would not be permitted in the Airport Runway Zone.

On January 25, 2013, the Department of Airports (DOA) sent a letter (Exhibit E) to the agent for the applicant stating that a Variance from Article 16, Airport Regulations, could be requested. However, the DOA also indicated they would be recommending denial to this request.

SURROUNDING LAND USES:

NORTH:

FLU Designation: Medium Residential (MR-5)

Zoning District: Residential Single Family (RS)

Supporting: Single Family Residential (Lake Osborne Estates)

SOUTH:

FLU Designation: Medium Residential (MR-5)

ZC

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Zoning District: Residential Single Family (RS)
Supporting: Single Family Residential

EAST:

FLU Designation: Commercial Low (CL-3)
Zoning District: Community Commercial
Supporting: Financial Institution

WEST:

FLU Designation: Low Residential 3 (LR-3)
Zoning District: Residential Single Family (RS)
Supporting: Residential Transitional (RT), Residential High (RH) and Single Family Residential (RS)

FINDINGS OF FACT:

The site is approved for a Place of Worship and accessory Sunday School use but is not approved with a School or Day Care facility. Also staff has confirmed with the Palm Beach County Health Department that this site is not licensed for a Day Care facility. A Day Care use as addressed in the Use Matrix of Table 4.A.3.A and Supplementary Use Standards of Article 4. Article 4.B.1.A.40.g. Airport Zoning Overlay states the establishment of a new Limited or General Day Care facility shall be prohibited in accordance with ULDC Article 16 Chapter C Section 1.E.2. If the Type II Variance is approved then the applicant may apply for a Day Care use subject to a Class A Conditional Use approval.

ANALYSIS OF ARTICLE 2, SECTION 2.B.3.E VARIANCE STANDARDS

When considering a Development Order application for a Type II Variance, the Zoning Commission shall consider Standards 1 through 7 listed under Article 2.B.3.E of the ULDC. The Standards and Staff Analyses are as indicated below. A Type II Variance, which fails to meet any of these Standards, shall be deemed adverse to the public interest and shall not be approved.

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:

YES: The special condition and circumstance that is peculiar to this parcel of land is that the subject site is located 1/3 mile off the end of Runway 15/33 and is within an area in which new Day Care facilities are prohibited by ULDC Article 16 Chapter C Section 1.E.2 (5 mile overlay zone).

2. SPECIAL CIRCUMSTANCES AND CONDITIONS DO NOT RESULT FROM THE ACTIONS OF THE APPLICANT:

NO: The special circumstances and condition are the direct result of the proposed actions of the applicant. The applicant desires to obtain approval for a land use prohibited by ULDC Article 16 Chapter C Section 1.E.2 Prohibited Land Uses. *Which states in no case shall a new educational facility, Limited or General Day Care, or a public private school be permitted at either end of a runway within an area that extends five statute miles in a direct line along the centerline of the runway and which has a width of ½ the runway length (5 mile overlay zone).*

3. GRANTING THE VARIANCE SHALL NOT CONFER UPON THE APPLICANT ANY SPECIAL PRIVILEGE DENIED BY THE PLAN AND CODE TO OTHER PARCELS OF LAND, BUILDING OR STRUCTURES, IN THE SAME DISTRICT:

NO: The special circumstances and condition are the direct result of the proposed actions of the applicant. The applicant desires to obtain approval for Day Care use as addressed in the Use Matrix of Table 4.A.3.A and Supplementary Use Standards of Article 4. Article 4.B.1.A.40.g. Airport Zoning Overlay, which states the establishment of a new Limited or General Day Care facility shall be prohibited in accordance with ULDC Article 16 Chapter C Section 1.E.2 Prohibited Land Uses. Article 16 states: *“in no case shall a new educational facility, Limited or General Day Care, or a public private school be permitted at either end of a runway within an area that extends five statute miles in a direct line along the centerline of the runway and which has a width of ½ the runway length (5 mile overlay zone).”*

4. LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND PROVISION OF THE 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 HARSHSHIP:

NO: The property has an Institutional Land Use and Zoning Designation and a Special Exception for a Place Of Worship which is consistent with its current use. The site has functioned as a Church without a Day Care facility at that location since the 1970s and the applicant states they have provided many services and outreach programs to the community since that time.

5. GRANTING THE VARIANCE IS THE MINIMUM VARIANCE THAT WILL MAKE POSSIBLE THE REASONABLE USE OF THE PARCEL OF LAND, BUILDING OR STRUCTURE:

NO: The Church is on a busy roadway with high visibility and has functioned as a Church without a day care facility at that location since the 1970s.

6. GRANTING THE VARIANCE WILL BE CONSISTENT WITH THE PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE PLAN AND CODE:

NO. One stated Purpose and Intent of Article 16 Airport Regulations is to promote the maximum safety of resident and property in areas surrounding Palm Beach County Airports.

7. GRANTING THE VARIANCE WILL NOT BE INJURIOUS TO THE AREA INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE.

NO: The proposed Day Care is 1/3 mile off the runway end of 15/33 and in a flight pattern for Runway 9/27. Runways 15/33 and 9/27 account for approximately 78% of the operations at Lantana Airport. In calendar year 2011 there were over 49,000 aircraft operations at Lantana Airport.

The Department of Airports tracks aircraft flight paths at Lantana Airport using a data feed from the FAA Terminal Area Radar. **Attachment 1 and 2** show aircraft flight activity for the weeks of April 21-27 2013, and August 21-28, respectively. On those exhibits green lines are departure tracks, and red lines are arrivals. The proposed Day Care facility is immediately east of where Lake Osborne crosses under Lantana Road. **Attachment 1** shows activity on Runway 9/27, note the right handed close in pattern over the proposed Day Care facility. These are likely helicopter flight school students conducting training patterns off Runway 9/27. **Attachment 2** is for all Runways during that week. Arrivals and departures off Runway 15/33 and departures off Runway 9 are shown passing over the vicinity of the school.

CONCLUSION

Granting of the variance would potentially be injurious to the area involved or otherwise detrimental to the public welfare should there be an incident involving a flight crash in the vicinity of the proposed Day Care facility.

Figure 1 - Aerial



Figure 2 Final Approved Site Plan: August 14, 1985

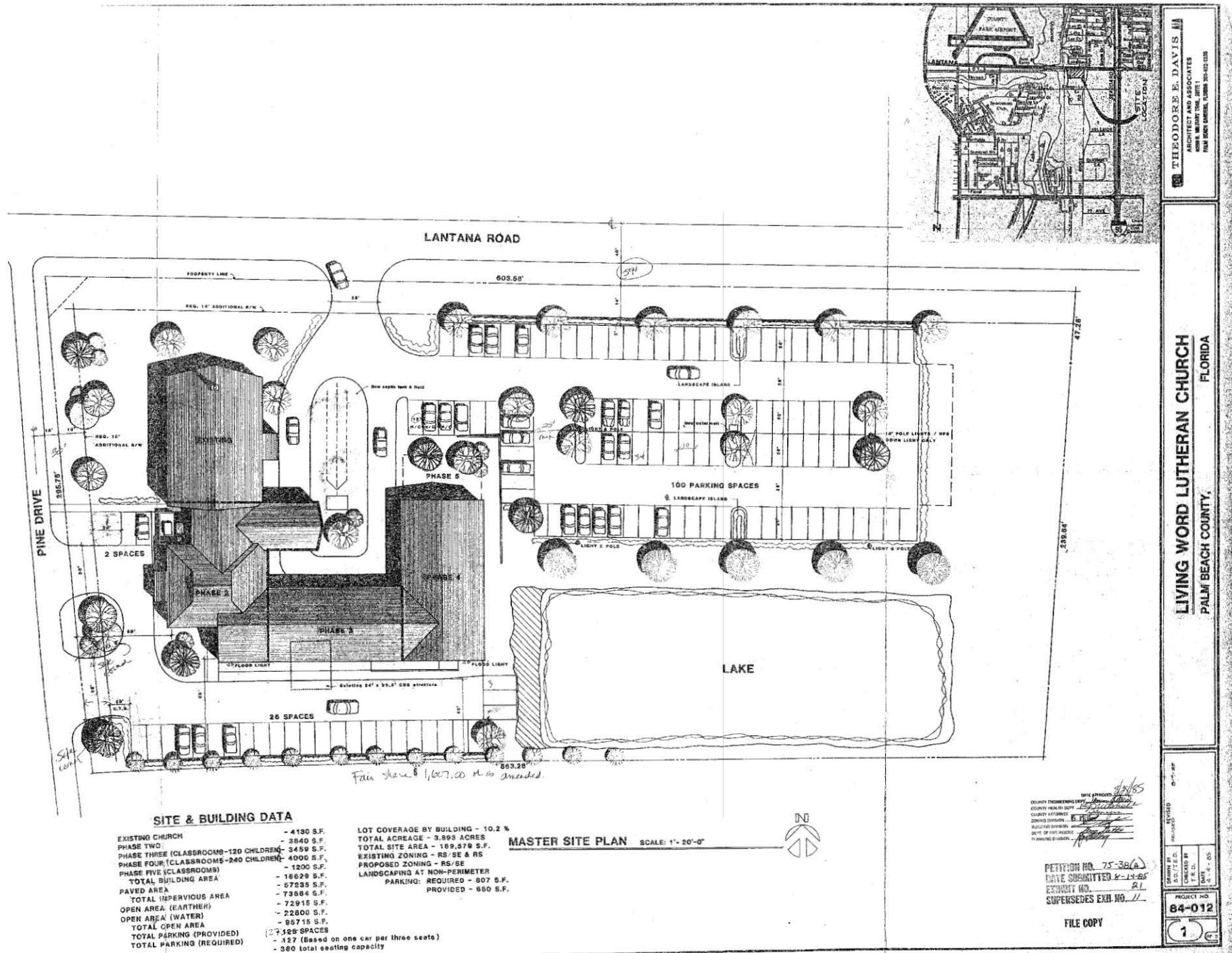


Figure 3 Preliminary Site Plan: November 11, 2012

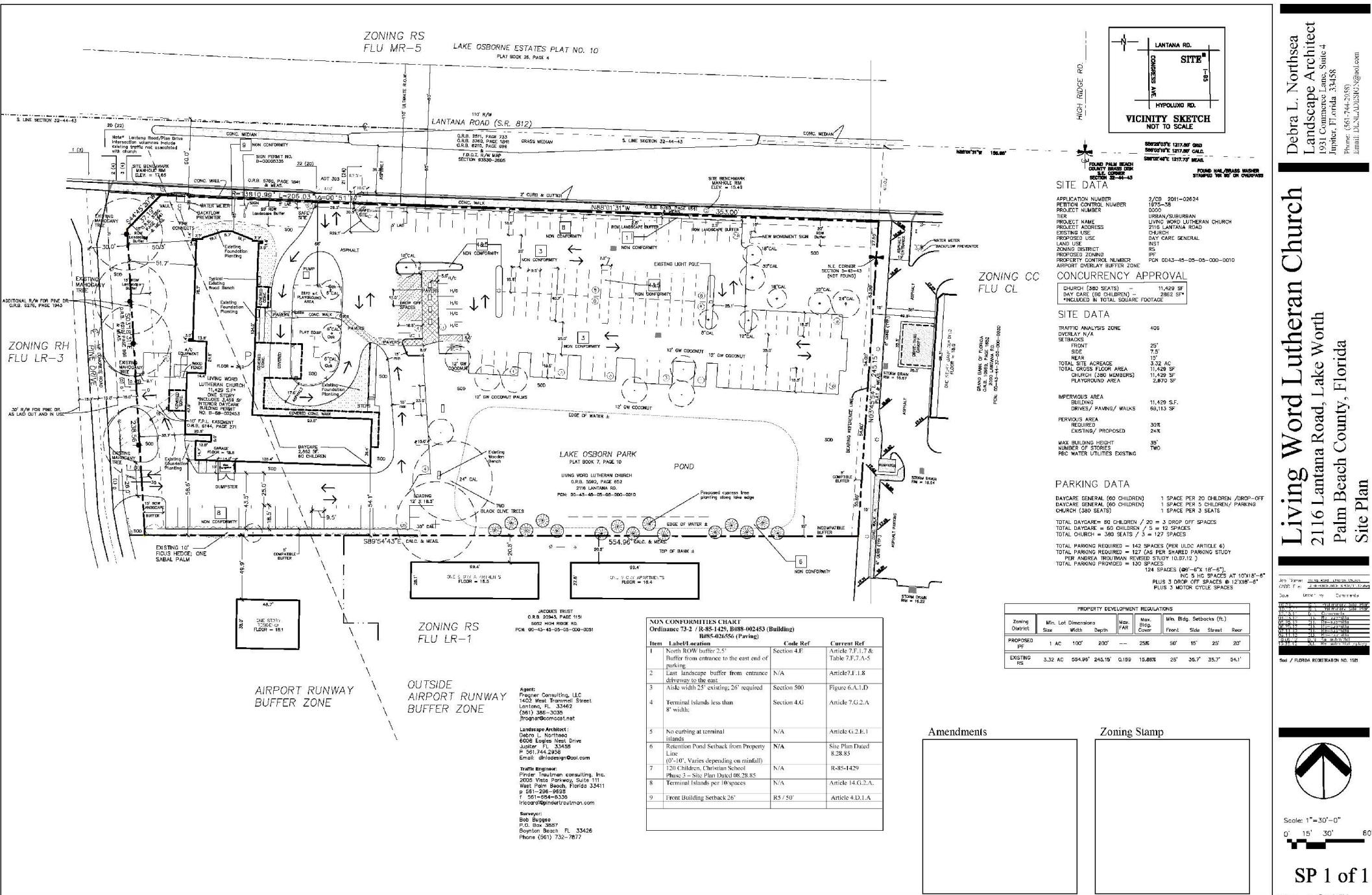


Figure 4 Palm Beach County Park Airport (Lantana) Flight Tracks
April 21 - April 27 (One Week) on Runway 9-27

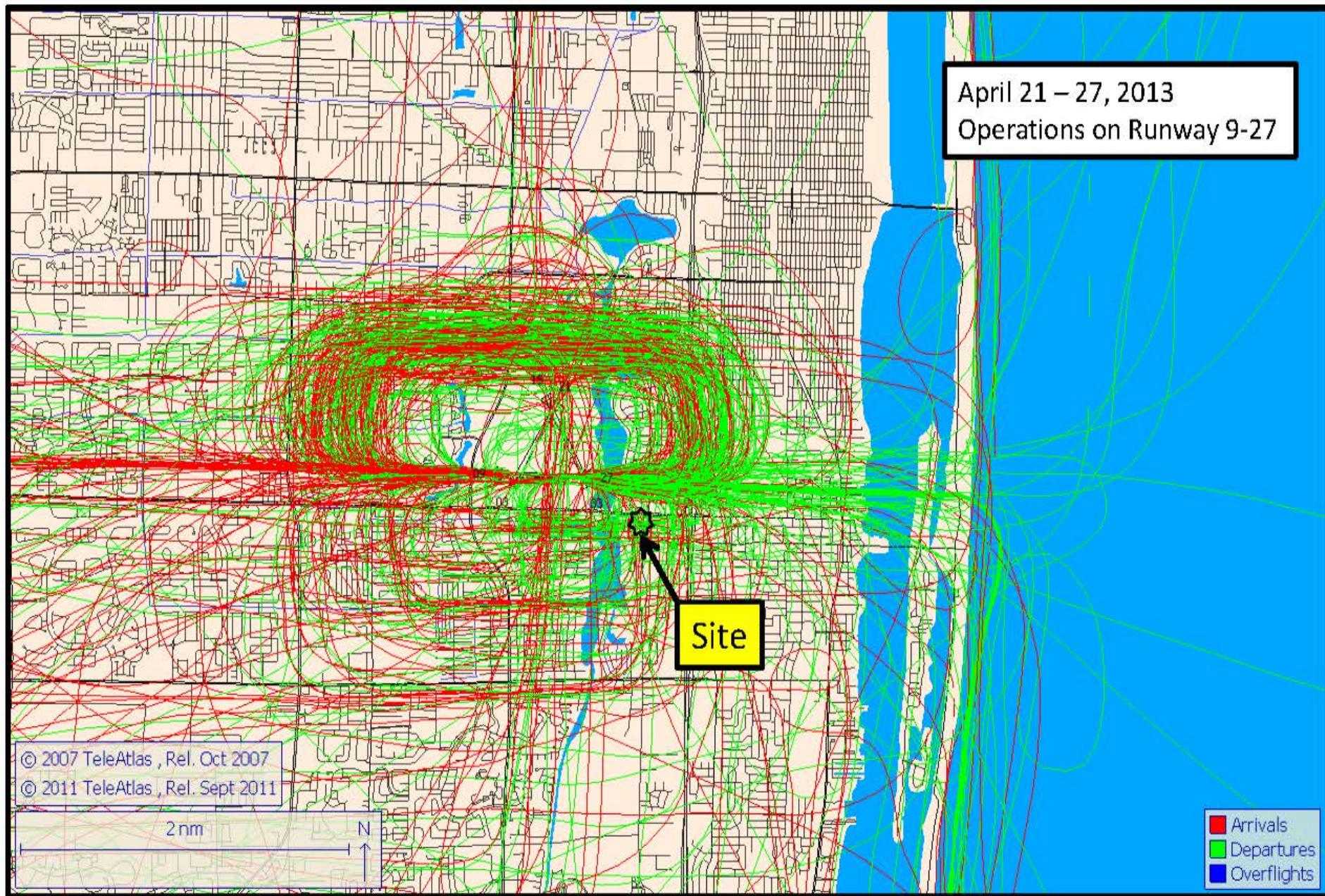
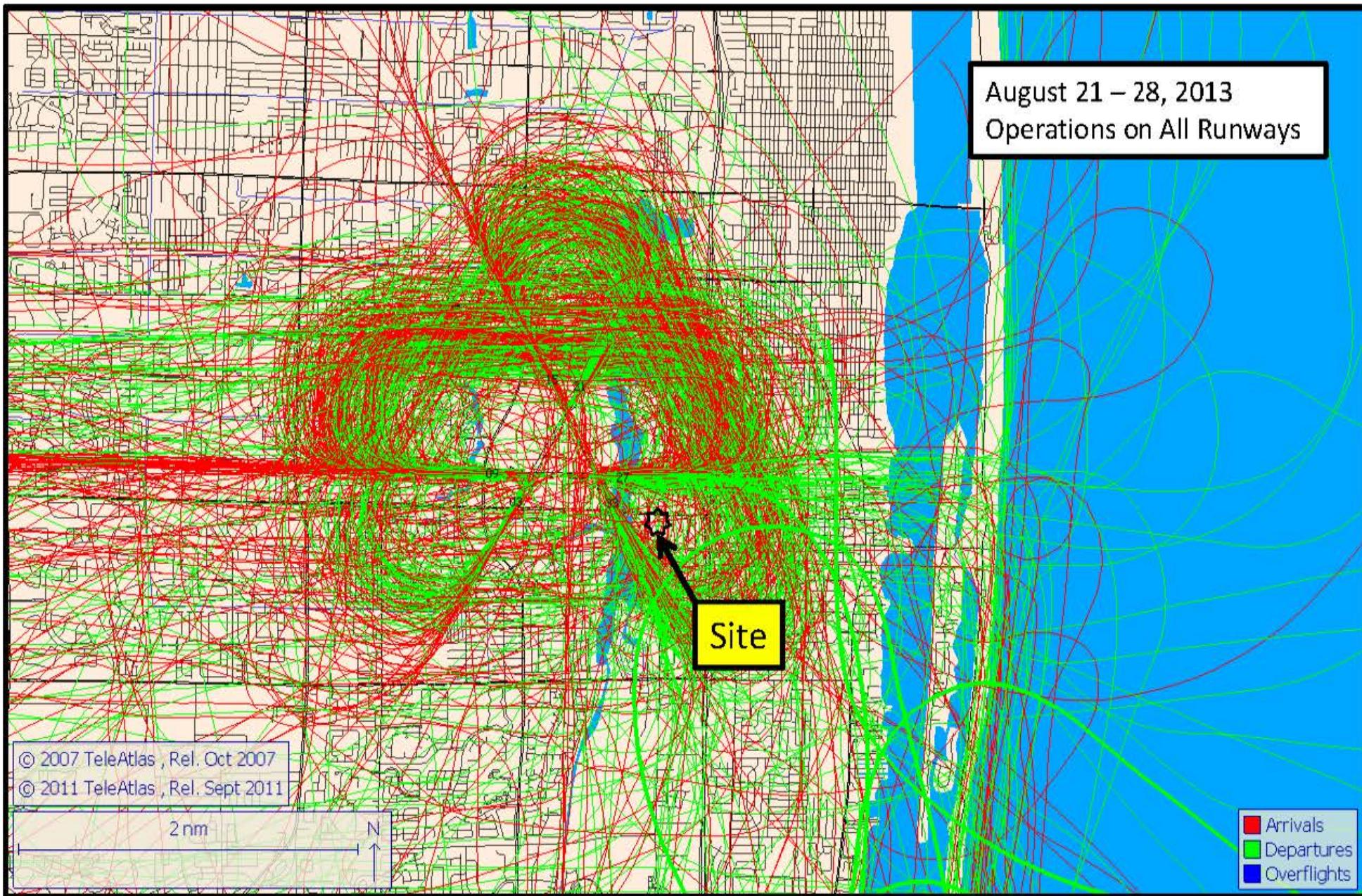


Figure 5 Palm Beach County Park Airport (Lantana) Flight Tracks
April 21 - April 27 (One Week) on Runway 9-27



ZONING COMMISSION CONDITIONS

EXHIBIT C

Type II Variance - Standalone

VARIANCE

1. This Variance is approved for the Living Word Lutheran Church of Lantana. Any change to the use(s) shall require reconsideration of the Variance by the Zoning Commission. (ONGOING: CODE ENF - Zoning)
2. 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. (BLDG PERMIT: BLDG - Zoning)
3. 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 Board of County Commissioners for review under the compliance Condition of this Approval. (ONGOING: MONITORING - Zoning)
4. 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.

Exhibit D: Disclosure Forms

PALM BEACH COUNTY - ZONING DIVISION

FORM # 09

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 _____, 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 [✓] Council President _____ [position - e.g., president, partner, trustee] of Living Word Lutheran Church of FL, Inc [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: 2116 Lantana Rd, Lantana, FL 33462

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.

EXHIBIT "A"

PROPERTY

LEGAL DESCRIPTION

THAT PORTION OF LOTS 1, 2, 3, 4 AND TRACT A, LAKE OSBORN PARK, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 7, PAGE 10, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING EAST OF PINE DRIVE; LESS AND EXCEPT THE FOLLOWING FOUR PARCELS: PARCEL CONVEYED TO COUNTY OF PALM BEACH BY RIGHT OF WAY DEED RECORDED IN O.R. BOOK 2511, PAGE 733; PARCEL CONVEYED TO PALM BEACH COUNTY BY RIGHT OF WAY WARRANTY DEED RECORDED IN O.R. BOOK 6210, PAGE 996; PARCEL CONVEYED TO PALM BEACH COUNTY BY RIGHT OF WAY WARRANTY DEED RECORDED IN O.R. BOOK 6276, PAGE 1943; AND PARCEL IDENTIFIED AS PARCEL 113 (AREA NO. 1 AND AREA NO. 2) TAKEN BY PALM BEACH COUNTY BY ORDER OF TAKING RECORDED IN O.R. BOOK 5760, PAGE 1841, ALL OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

CONTAINING 3.326 ACRES, MORE OR LESS.

SUBJECT TO RESERVATIONS, RESTRICTIONS, EASEMENTS AND RIGHTS OF WAY OF RECORD.

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.

David Pfohl
DAVID Pfohl, Affiant
(Print Affiant Name)

The foregoing instrument was acknowledged before me this 10th day of September, 2013, by David Pfohl, [] who is personally known to me or [] who has produced _____ as identification and who did take an oath.



Anne Silva
Notary Public

Anne Silva
(Print Notary Name)
NOTARY PUBLIC
State of Florida at Large
My Commission Expires: 08/16/2016

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
------	---------

Living Word Lutheran Church of FL, Inc. 2116 Lantana Rd. Lantana, FL 33462 100%

Exhibit E: Letter dated January 25, 2013 from Department of Airports

PALM BEACH COUNTY
BOARD OF COUNTY
COMMISSIONERS
Steven L. Abrams, Mayor
Priscilla A. Taylor, Vice Mayor
Hal R. Valeche
Paulette Burdick
Shelley Vana
Mary Lou Berger
Jess R. Santamaria

COUNTY ADMINISTRATOR
Robert Weisman
DEPARTMENT OF AIRPORTS

January 25, 2013



Coker & Feiner, Esqs.
1404 South Andrews Avenue
Fort Lauderdale, FL 33316-1840

Att: Rod A. Feiner

**Re: Living Word Lutheran Church of God
Establishment of Accessory Daycare Facility**

Dear Mr. Feiner:

Bruce Pelly asked me to respond to your letter of January 8, 2013. Contrary to your assertion, the Department of Airports has not informally approved a Day Care facility at the Living Word Lutheran Church of God (Church). In our meeting of December we made it clear that the Church fell within the 5 mile buffer zone and if the proposed daycare facility were to be located in that building, the Department of Airports would recommend denial of the application.

In the remainder of your letter of January 8, 2013 you make the argument that the character and use of Lantana Airport are such that the airport would have virtually no impact on the proposed daycare. Based on our knowledge of the airport operations and actual aircraft flight track data, we disagree. As we discussed in our recent meeting the Palm Beach County Unified Land Development Code Article 2.B provides the opportunity to request a Variance from Article 16, Airport Regulations.

Cordially,
Jerry L. Allen

Jerry L. Allen, AAE
Deputy Director
Palm Beach County Department of Airports

JLA:nh

cc: Bruce V. Pelly, Director of Airports
Jon P. McGillis, Zoning Director
Robert Banks, Esq.
File

846 PALM BEACH INTERNATIONAL AIRPORT
West Palm Beach, Florida 33406-1470
(561) 471-7412 FAX: (561) 471-7427 www.pbia.org

PALM BEACH COUNTY GLADES AIRPORT
Pahokee

PALM BEACH COUNTY PARK AIRPORT
Lantana

NORTH COUNTY GENERAL AVIATION AIRPORT
Palm Beach Gardens

"An Equal Opportunity-Affirmative Action Employer"

Exhibit G: Applicant's Justification Statement

Justification Statement

A Variance from Article 16.C.1.E.2.a

For

Living Word Lutheran ChurchDay Care, General

~~June 17, 2013~~
~~September 5, 2013~~
October 4, 2013

The 3.326 acre church property is located on the south side of Lantana Road, 600 feet west of I-95 in unincorporated Palm Beach County. The parcel and has a Future Land Use category of Institutional (INST) with Residential Single Family (RS) zoning and supports a Place of Worship approved in 1975 by the Board of County Commissioners for a special exception to allow the church & Sunday school for 240 children.

This Petition requests the following:

On behalf of the property owner, Living Word Lutheran Church, Frogner Consulting is submitting this request for a **Type II Stand Alone Variance** to allow a Day Care, General for 60 children.

ULDC Article 16.C.1.E.2.a, states that "in no case shall a new educational facility, Limited or General Day Care, or a public or private school be permitted at either end of a runway within an area that extends five statute miles in a direct line along the centerline of the runway and which has a width of the length of 1/2 the runway."

The variance requests an exception from the prohibition of a day care within this area. The area or "box" is known as the "Five-mile Restriction Zone" also called the Runway Protection Zone (RPZ).

Palm Beach County Airpark is located six miles south of PBIA and $\frac{1}{2}$ mile west of the subject site in unincorporated Palm Beach County. According to the Airpark Master Plan & Profile report, the airpark is designated as a reliever airport by the FAA. The airpark is restricted to a maximum of 12,500 pounds (small twin aircraft) and is primarily used by recreational and training aircraft – no jets are permitted.

Runway 15/33 at PBC Airpark has a length 3,421 feet ($1/2$ of $3421' = 1,710'$). So the RPZ "box" in a direct line from runway 15/33 extends five miles having a width 1,710 feet: Thus, the impacted area from runway 15/33 is 1,710 feet wide by five miles long is an area that prohibits education facilities and day care uses. The box encompasses a portion of the church property and building within the 1,710 foot width. As shown on the aerial graphic, the line bisects the church structure; however, the education wing used by the Sunday school and proposed day care is **outside** the box. This variance is to allow the day care in the portion of the existing building. The church property is considered an "affected area" by zoning staff based on the intended

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3402 Southeast Clubhouse Place Stuart, FL 34997
Phone: 561-386-3035 E-Mail: jfrogner@comcast.net

rezoning of the site from RS to IPF once this request is approved.

Project Background:

The original Lutheran church, known as Living Word Lutheran Church was approved in 1975 by the BCC for a special exception to establish a place of worship. At that time the site was in the Residential Single Family (RS) zoning district. The facility was constructed in 75-76 and Building records show the 4,130 SF worship building on 1.53 acres.

In 1985 the BCC approved adoption of Resolution R-85-1429 (Phases 2 – 5), expanding the church building and school for up to 240 children in the Sunday school. Phase 2 & 3 were constructed leaving the church at its present square footage of 11,429 SF with a school capacity of 120 children.

In 1988 the church purchased the adjacent 1.84 acre tract to the east for the expansion and parking. In 1989, the church conveyed 4,948 SF to Palm Beach County through a Right-of-Way Deed for the widening of Lantana Road.

An additional property dedication for ROW along Pine Drive on the west, resulted in the present configuration of 3.32 acres as shown on the survey.

In 2011, the church was asked by community leaders to start a Christian based day care. Congregation members and homeowners in the neighborhood realized an opportunity to further support the community by offering day care at much reduced rates in keeping with the Church's goal of offering outreach programs to the community, something they have done for the past 33 years. The Church, established in 1975 has been providing ministerial services to the community and also engages in various community programs. For instance the Church runs a men's club, women's club Sunday school, youth group activities and bible study classes. The Church also engages in various other charitable and community outreach activities, such as local Voting Precinct for local & national elections, AA meetings, Blossoming Minds which offers therapy for disabled children, food pantries, crisis counseling and annual rummage sales. Thus Church and structure have been a part of the Palm Beach County community for more than 33 years.

In order to obtain approval for a day care, a Class B Conditional Use for the day care, General with 60 children is required. However, ULDC regulations require consistency between the land use and zoning so the existing RS zoning designation had to be changed as well. In the fall of 2011, a Petition for rezoning from RS to the Institutional Public Facilities (IPF) district and request for the Class B Conditional Use was submitted to the zoning department.

After six months in the review process, it was then discovered that the site was impacted by the RPZ: There are no provisions in Airport, FAA or the ULDC for a site or structure bisected by the RPZ line, only that a site or use *"within"* the RPZ is prohibited. Because of the rezoning petition filed, staff considers the entire site an "affected area". *The Church and its classrooms are under one roof, however the Church and the classrooms are separate uses in actual operation and separated by a fire door.*

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 3402 Southeast Clubhouse Place Stuart, FL 34997
 Phone: 561-386-3035 E-Mail: jfrogner@comcast.net



Meetings between the applicant, agent, applicant's attorney, zoning staff and the county attorney, determined airport staff had the final "say". During the time between zoning and airport staff meetings, zoning staff forced the withdrawal of the rezoning Petition over the applicant's strenuous objections. The applicant pressed forward with both zoning and airport staff negotiations, believing the fact that the actual operation of the proposed day care was located outside the RPZ area would prevail under the assumption of "common sense."

On February 19th, the applicant and attorney met with Bruce Pelly, PBIA Airport Director. It was determined the best solution would be to obtain an airport variance. Airport staff would offer no comment to the variance request. Because the educational wing is outside the RPZ, the applicant believes there is no impact to actual airport operations. Based on the meeting and this assumption, the applicant is making this request.

VARIANCE JUSTIFICATION AND OVERVIEW:

CODE SECTION	REQUIRED	PROPOSED	VARIANCE
ARTICLE 16.C.1.E.2.a	In no case shall a new educational facility, be permitted at either end of a runway within an	A new Day Care be permitted within an area that extends five statute miles which	To allow a day care within a building that is located within the 1,710' width of the

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area that extends five statute miles in a direct line along the centerline of the runway and which has a width of the length of one half of the runway.

The Unified Land Development Code (ULDC) references Article 16, Section 16.C.1.E.2.a as follows: *"In no case shall a new educational facility, Limited or General Day Care, or a public or private school be permitted at either end of a runway within an area that extends five statute miles in a direct line along the centerline of the runway and which has a width of the length of 1/2 the runway."* [Ord. 2011-016]

The actual area impacted by these dimension is 44,973,000 SF, almost 45 million square feet! To put that in perspective, approximately 2 square miles are impacted by the RPZ. Lantana Airport is composed of three separate runways; 15/33, 3/21 and 9/27. The Church's property is bisected by Runway 15/33. Runway 9/27 is used 38% of the time, Runway 3/21 is used 23% of the time and Runway 15/33 is used 39% of the time. Additionally, there were 49,294 aircraft operations from the airpark in 2011.

The code language from Florida Statue Chapter 333, Airport Zoning, and Section 333.03(3) sets the dimensional standards for the "5 mile restriction" or RPZ. Chapter 333 also provides exceptions to allow educational facilities **but does not prohibit day care facilities**. Thus this variance request is from the ULDC and the Florida Statues have **no restrictions for a Day Care General within the RPZ**.

Article 2.B.3.E, Variance Standards and Article 16, Section C.2 Variances states:

"Application for a Type II airport variance may be submitted to erect or increase the height of any structures, or to use property which does not comply with the regulations prescribed in this Article, to the Zoning Commission pursuant to the procedures and standards set forth in Article 2.B.3, Variances". The county attorney and zoning staff said that only Standards 1, 3, 5 and 6 must be considered (in addition to F.S. Chapter 333) and those standards shall be addressed in this request. Thus the applicant must apply for and obtain a Type II variance **even though the location of the existing classrooms the day care will utilize are outside the RPZ area**.

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 3402 Southeast Clubhouse Place Stuart, FL 34997
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ULDC Section 16.C.1.E.2 further notes:

2) *The language in subsection a. above shall not be construed to require the removal, alteration, sound conditioning, or other change, or to interfere with the continued use or expansion of any Limited or General Day Care use in existence, or real property in use, or with a valid development order prior the effective date of this Ordinance. Expansion or alterations of a Day Care located within the runway area that represents an increase in the number of occupants shall be prohibited.* [Ord. 2011-016]

Note: This provision was enacted in 2011 thru the zoning division – language that does NOT exist in the FL Statues. F.S. Chapter 333 notes any educational facility, day care approved prior to 1996 may continue in its current configuration. Living Word's school programs have been using the facilities since its inception in 1976 and utilizing the educational wing for its intended purpose-Christian education for both children& adults since 1989.

Further research on the FL Statues reveals that it is similar to many local ordinances in that “one-size fits all” whereas in reality, no two sites or uses are identical.

The subject site was approved and original approval expanded in 1989 for a school with up to 240 students. The church constructed the educational wing on the east elevation of the facility 1988 as shown on the graphics. The church has utilized the classrooms for a pre-school since 1990 which supports a varying number of children.

A playground was constructed on the west elevation of the facility in 1990 and has been in use since. An attempt to “vest” the playground was denied by zoning staff: although no permits for the playground were required, the fence was constructed without benefit of permits. The basis for zoning staff denial was this: If a building permit had been applied for, an administrative amendment to the site plan indicating the playground would have been necessary. This modification was not completed because the contractor did not apply for the fence permit, thus did not obtain an administrative amendment depicting the actual play ground on the site plan. Since the playground is not on the approved site plan, it “does not exist.” This exercise was thoroughly discussed and debated during the DRO process and zoning staff could only consider what was shown on the approved site plan-no matter that numerous non-conforming elements identified on the approved site plan were granted vested status. Thus this request includes continuation of the existing playground.

There are numerous public and charter schools and day care facilities developed prior to 1996 that are allowed to continue under current ULDC &FL Statues rules. Recently the Franklin Academy Charter School was granted this same type of variance to construct the entire educational facility within the RPZ area.

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FLORIDA STATUESVARIANCE CRITERIA

An exception applicable to the five-mile restriction in Section 333.03(3) F.S. is addressed below:

EXCEPTIONS APPROVING CONSTRUCTION OF AN EDUCATIONAL FACILITY WITHIN THE DELINEATED AREA SHALL ONLY BE GRANTED WHEN THE POLITICAL SUBDIVISION ADMINISTERING THE ZONING REGULATIONS MAKES SPECIFIC FINDINGS DETAILING HOW THE PUBLIC POLCY REASONS FOR ALLOWING THE CONSTRUCTION OUTWEIGH HEALTH AND SAFETY CONCERNS PROHIBITING SUCH A LOCATION.

Section 333.03, FL Statues above, is the specific provision that allows local zoning authorities to adopt airport zoning regulations. Thus Palm Beach County has amended their code prohibiting the establishment of a day care in the five-mile RPZ area. An exception may be granted Living Word Lutheran Church because health and safety are not impacted: the educational wing was constructed in 1988 outside the RPZ and no new construction is necessary

The unique nature of the Lantana Airport must also be taken into account when reaching a determination on this issue. Most flight training operational uses are very specific in terms of airplane flight patterns. Flight training involves stop & go's. Such procedures usually use a $\frac{1}{2}$ mile radius from the airport. Traditionally, a stop & go flight maneuver makes left turns when using their radius. If this is the case then even if the flight training operations did use Runway 15/33, which is the non-preferred runway, then the radius for such a maneuver would not even approach or come near the Church property.

Thus, the Church property would not be impacted by flight patterns. The special circumstances associated with the proximately to the actual airport, the fact the educational wing is *NOT within the RPZ* but attached to a structure that is partially in the zone, that planes are at flight altitude when passing *nearby* the site which is not in the landing or take-off approach and the fact that the proposed day care classrooms are outside the RPZ significantly reduce any safety concerns. This conclusion is supported by ample evidence such as weekend flight patterns (school is out during this time), and take-off and landing approaches adjacent to water bodies (Lake Ida). Pilot training mandates pilots always have a secondary landing area selected in emergency situations. The church property is located in a heavily wooded area, an area to be avoided in emergency situations. The openness of the airport area or nearby Lake Osborne would be preferred emergency landing areas.

The educational wing is separated by the main worship facility and is accessed through 2 fire doors. Additionally, the day care has two existing entry/exit points independent from the remaining worship facility.

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Since the proposed day care use actually operates outside of the Section 333.03 area and the use of the airport shows that there is virtually no impact on the proposed day care use by the Lantana Airport, the day care use should be allowed to take place on the property and the use should not be deemed prohibited by County Code. This is the case even though the Church building is bisected by the Section 333.03 line and the Church and daycare building is in one overall structure.

Other Variance criteria contained in Section 333.07(2) are addressed below:

SUCH VARIANCES MAY BE ALLOWED WHERE A LITERAL INTERPRETATION OF ENFORCEMENT OF THE REGULATIONS WOULD RESULT IN PRACTICAL DIFFICULTY OR UNECESSARY HARDSHIP AND WHERE THE RELIEF GRANTED WOULD NOT BE CONTRARY TO THE PUBLIC INTEREST BUT WOULD DO SUBSTANTIAL JUSTICE AND BE IN ACCORDANCE WITH THE SPIRIT OF THE REGULATIONS AND THIS CHAPTER.

A variance from the five-mile restriction should be granted to this project because a literal enforcement of the restriction would result in practical difficulty or unnecessary hardship. The existing structure and classrooms have been in continuous use since 1989. In fact the classrooms are not even in the RPZ, only a portion of the structure the classrooms are attached to. The use is compatible with the neighborhood, has no code enforcement issues nor has it been cited. Additionally, a similar airport variance was issued for a large educational facility (Franklin Academy) that lies totally within the RPZ, albeit a farther distance from the airport than Living Word.

The application of the restriction would prevent continuing Christian education for the areas children, yet allow adults to practice & observe their Christian education & beliefs. Further, a variance should be granted because the granting of the variance would not be contrary to the public interest where the continuing education wing and classrooms have remained in constant use since the construction in 1989. There is a strong public benefit in the location of the day care among the close proximity of the residential population within walking distance of the facility. As discussed above, there is little actual safety concern regarding this project.

Finally, granting this variance would do substantial justice and be in accordance with the spirit of the regulations and Chapter 333, Florida Statues. Since its inception, the Airport Zoning statute has included provisions guaranteeing the right of property owners to seek a variance for certain situations like the case where strict interpretation of the five-mile provision does not provide any of the intended benefits of the zoning regulation except discriminate against children receiving a Christian education. The main issue of the Statue is for height restrictions rather than uses: note only educational type uses are prohibited. No further development within the building is necessary for continued use.

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The list of matters to be considered as set out in Section 333.025, F.S. are addressed below:

- a) The nature of terrain and height of existing structures.**
This applies only to projects that may penetrate airspace through elevation of the land itself or construction of a tall structure. The proposed day care, located within the educational wing a portion of the existing of the building has no impact.
- b) Public and private interests and investments.**
Both private and non-profit investments have supported this facility and the public interest allows both pedestrian and vehicular traffic to worship and provide day care for a Christian education.
- c) The character of flying operations and planned development of Airports.**
Lantana Airport is composed of three separate runways; 15/33, 3/21 and 9/27 and Runway 3/21 is the preferred and primary runway for use. The Church's property is bisected by Runway 15/33, thus does not impact any flying operations.
- d) Federal Airways as designated by the FAA**
FDOT staff advised the applicant this criterion is for tall structure analysis.
- e) Whether the construction of the proposed structure would cause an increase in the minimum descent altitude or decision height at the affected airport.**
This criterion is applicable to the tall-structure analysis also, however, no new construction is necessary for the existing classrooms.
- f) Technological advances**
Not applicable, applies to the tall structure analysis.
- g) The safety of persons on the ground**
The heavily wooded area where the church is sited would eliminate the site as a back-up emergency landing area.
- h) Land Use density**
Not applicable-no higher residential density uses will move toward the airport, therefore there should be no concern over increased residential density.
- i) The safe and efficient use of navigable airspace.**
Not applicable, applies to the tall structure analysis.
- j) The cumulative effects on navigable airspace of all existing structures, proposed structures identified in the applicable jurisdictions comprehensive plan and other known proposed structures in the area.**
Not applicable, applies to the tall structure analysis.

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ULDC ARTICLE 2.B.3.E VARIANCE STANDARDS 1, 3, 5 AND 6:

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 district;

YES. The special condition that existing church site is bisected by the RPZ is a circumstance that is not applicable to other parcels in the same zoning district. The regulation does not consider nor have provisions given the fact the proposed day care will be in a building bisected by the 5-mile restriction zone (RPZ) but in a portion of the (building) that is outside the area. Only because of the rezoning from RS to IPF at the Zoning Divisions request is the entire site considered “within the affected area.”

3. 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;

YES. The granting of the variance will not confer any special privilege on the applicant because a similar airport variance was issued for the Franklin Academy, a new educational facility that was recently constructed and opened as a Charter School. The school lies totally within the RPZ, albeit a farther distance from the airport than Living Word.

The classroom, located in the Education wing is not itself inside the 5-mile restriction area, but simply attached to a structure that is partially inside the 5-mile zone. In this case, a variance request is purely an arbitrary exercise where a variance must be obtained in order to move forward with the rezoning and Class B Conditional Use for the day care.

5. Granting the variance is the minimum variance that will make possible the reasonable use of the parcel of land, building or structure;

YES. Granting this variance is the minimum necessary to make reasonable use & accomplish the continued school that has been in use for over 20 years for hundreds of local children. Approval of this request will allow the reinstatement of the rezoning petition from RS to IPF complying with the Policies of the Comprehensive Plan.

This portion of the church facility has supported children and adult educational programs for over 20 years in the existing configuration as presently exists. Further, the location of the Sunday school playground is the only area within the RPZ that will be utilized by the day care.

6. Granting the variance will be consistent with the purposes, goals, objectives, and policies of the Plan and this Code; and

YES. The granting of this variance will be consistent with the comprehensive plans purposes, goals and objectives of the plan and the code.

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The rezoning from the RS to the IPF zoning district complies with the policies for consistency in the Comprehensive Plan. The day care use is also subject to a Class B Conditional use. Unfortunately, staff could not make a positive decision on the 5-mile runway encroachment even though Airport staff twice stated there was no impact, that the proposed educational wing (according to zoning's own depiction on the runway map) was outside the RPZ. Both zoning and airport staff feel the variance request is the best way to resolve this issue which is not provided for in any State or local regulations or provisions.

On behalf of the Church, it is with great Faith that this use merits your consideration and approval of the Type II Airport Variance request.

PROPOSED CONDITIONS OF APPROVAL:

1. Reinstatement of the rezoning and CBC petition
2. Limited to 60 children
3. Existing playground location allowed

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