

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

Application No.: SW-2020-01268
Application Name: BET Holdings
Control No./Name: 2020-00066 (BET Holdings)
Applicant: BET Holdings LLC
Owners: BET Holdings LLC
Agent: Urban Design Studio - Bradley Miller and Christi Tuttle
Telephone No.: (561) 366-1100
Project Manager: Joanne Keller, Director Land Development

TITLE: a Subdivision Waiver **REQUEST:** to reduce the Minimum Legal Access for a Collocated Landscape Services use in the AR/RSA Zoning District.

APPLICATION SUMMARY: Petition of Urban Design Studio on behalf of BET Holdings, LLC, requesting variance from the requirement that Minimum Legal Access for a Collocated Landscape Services use in the AR/RSA Zoning District shall be by a Local Commercial Street.

SITE DATA:

Location:	Approximately 0.16 miles south of Heritage Farms Rd on the west side of Park Lane Road
Property Control Number	00-41-45-12-00-000-3040
Proposed Future Land Use Designation:	No Change
Existing Zoning District	Agricultural Residential (AR)
Proposed Zoning District	No Change
Total Acreage	5.19 Acres
Affected Acreage:	5.19 Acres
Tier:	Rural
Overlay District:	N/A
Neighborhood Plan:	West Boynton Community Plan
CCRT Area:	N/A
Municipalities within 1 Mile:	None
Future Annexation Area	N/A

RECOMMENDATION: Staff recommends **Denial** of the request due to failure to meet submittal deadlines pursuant to F.S. 125.022 and due to outstanding review issues not addressed by the applicant. However, should the Zoning Commission recommend approval of the request, staff recommends the approval be subject to the Conditions of Approval as indicated in Exhibit C.

PROJECT HISTORY:

This site is currently operating as a collocated Wholesale Nursery/Landscape Service site and is under Code Enforcement action to proceed through the required application process to establish the Landscape Service as a collocated use in accordance with the regulations adopted by the Board of County Commissioners.

An application for DRO Final Site Plan approval for this site was submitted on May 4, 2020 and is contingent upon approval of this Subdivision Waiver.

POSTPONEMENT: Since the signage was not posted in accordance with Article 2.B.5.D Signs, Staff recommended postponement of this application at the February 4, 2021 ZC Hearing. The Zoning Commission unanimously agreed to postpone this application to the March 4, 2021 Hearing. At the March 4, 2021 ZC Hearing, the Zoning Commission voted to postpone this application to the May 6, 2021 ZC Hearing to give the applicant additional time to meet with the surrounding community to attempt to address their concerns.

SURROUNDING LAND USES:

EAST:

FLU Designation: Rural Residential (RR-10)
 Zoning District: Agricultural Residential District in Rural Residential (AR-RURAL)
 Supporting: Agricultural Residential

NORTH:

FLU Designation: Rural Residential (RR-10)
 Zoning District: Agricultural Residential District in Rural Residential (AR-RURAL)
 Supporting: Agriculture Residential

SOUTH:

FLU Designation: Rural Residential (RR-10)
 Zoning District: Agricultural Residential District in Rural Residential (AR-RURAL)
 Supporting: Agriculture

WEST:

FLU Designation: Rural Residential (RR-10)
 Zoning District: Preservation/Conservation District (PC)
 Supporting: Preservation/Conservation

TYPE 2 WAIVER SUMMARY:

Pursuant to 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 for in Table 11.E.2.A-2, Chart of Minor Streets, and pursuant to Table 11.E.2.A-2, access to commercial uses shall be by a minimum 80-foot right of way. In Ordinance 2020-007 the Board of County Commissioners (BCC) added a Type II Waiver process for access to landscape services uses, considered a commercial use, within the AR Zoning District where existing access was less than minimum required commercial access. Previously, those requests were subject to subdivision variance approval by the Zoning Commission but the recent ULDC changes require this application to be reviewed by the BCC. This Type 2 Waiver application was submitted pursuant to ULDC Table 2.B.7.D, Summary of Type 2 Waivers, to request access to a landscape services use site from existing roadways (Park Lane Road and Heritage Farms Road), both not meeting the minimum requirements set forth in Table 11.E.2.A-2, Chart of Minor Streets. These roads are both privately maintained public 110 foot ingress/egress easements. The existing roads have varying amounts of pavement, no paved shoulders, no sidewalks, swales of varying width and a pavement section that varies. The applicant is seeking approval to use the existing roadways to access the site, which is south of Heritage Farms Road and west of State Road 7, to allow continued operation of a wholesale nursery with a co-located landscape services use. Pursuant to F.S. 125.022, applications shall be brought to the BCC for a decision within 180 days of a complete submittal unless a time extension is agreed upon by both parties. The applicant was sent a courtesy notice of the impending deadline but did not request a time extension. Although there were still outstanding issues that the applicant had not addressed as part of this application’s review, staff was forced to schedule this application for public hearing. In order to comply with the deadlines pursuant to F.S. 125.022 and due to the outstanding review issues, staff is recommending **Denial** of this request. Should the Zoning Commission find that this request meets the Type 2 Waiver Criteria, staff requests that the Zoning Commission recommend the BCC impose the conditions included in the Conditions of Approval section.

Type 2 Waiver Chart

Construction Standard	Requirement	Provided	Waiver
Min. ROW Width	80'	110' Ingress/Egress Easement	Complies - no waiver required
Min. Pavement Width	24'	Varies (23' – 25' adjacent to site)	Allow as existing
Shoulders	2' compacted	None	Allow as existing
Sidewalk	5'	None	Allow as existing
Swale	15'	Varies	Allow as existing

Wearing Surface	Materials per Table 100.9	Varies	Allow as existing
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ZONING FINDINGS:

This application is for the approval of a Landscape Service Use that is collocated with a Wholesale Nursery Use. This application currently have multiple issues related to design and layout of the Landscape Service use, Buffers and structure requirements that may or may not qualify for Agricultural exemptions. These outstanding issues would require a resubmittal from the applicant in order to resolve. The DRO application has received four time extensions beyond the 120 day review standard. If the subsequent subdivision waiver were to be granted the applicant would be required to request and be granted an additional time extension in order to meet required deadlines for resolving these outstanding issues.

LAND DEVELOPMENT FINDINGS:

When considering a Development Order application for a Type 2 Waiver, the BCC shall consider the Standards in Article 2.B.2.G.3 of the ULDC. The Standards and Staff Analyses are indicated below. A Type 2 Waiver, which fails to meet any of the standards, shall be deemed adverse to the public interest and shall not be approved.

- 1. The Waiver does not create additional conflicts with other requirements of the ULDC, and is consistent with the stated purpose and intent for the zoning district or overlay;**

Applicant’s Response: *This property has been operating as a wholesale nursery with landscape service use for many years and is under review of a Final Site Plan application to bring the site into compliance with regulations recently adopted by the Board of County Commissioners. The purpose and intent of the new regulations is to control the use of landscape services when collocated with wholesale nursery. The review of the Final Site Plan will require compliance with other requirements of the ULDC zoning, overlay and related development regulations. This waiver is being requested in response to a review comment from the Land Development Division as part of the Final Site Plan. With the granting of this waiver and approval of the Final Site Plan, all applicable requirements of the ULDC will have been determined to be met for this property.*

It should also be noted that should the waiver NOT be granted, the alternative is for the applicant to construct a local commercial roadway through an established rural area which contradicts the intent of the zoning district, established for a mix of agricultural residential uses. The collocated use has been determined to be allowed by the ULDC with controls and limitations of the landscape service component by the regulations. These regulations will control the volume of traffic which has been the concern throughout the regulation amendment process. It would be more in conflict with the intent of the zoning district to require the construction of the roadway improvements required for a local commercial roadway.

Staff Response: INCORRECT. There are outstanding issues the Zoning application, and if approved, may result in conflicts with the Unified Development Code (ULDC). Staff requested a survey of the roadway along with an engineering statement that would have clarified the width of the pavement, width of the swales and pavement section. Due to the timeline established by F.S. 125.002, the applicant could have requested an extension and provided the requested information or taken the application to the Zoning Commission and Board of County Commissioners with the recommendation of denial by County Staff and the applicant opted for the latter. Due to the lack of information provided by the application, Staff cannot be certain that granting this waiver will not create additional conflicts with the ULDC.

- 2. The Waiver will not cause a detrimental effect on the overall design and development standards of the project, and will be in harmony with the general site layout and design details of the development; and,**

Applicant's Response: *This waiver pertains to offsite street requirements and will compliment and support the collocated wholesale nursery and landscape service use which is under review through the Final Site Plan process rather than cause a detrimental effect on the design of the project. To grant the waiver and allow the road to remain in its rural condition is more in harmony with the area than to require the improvements of the Local Commercial street.*

Staff Response: INCORRECT. While it is correct that this waiver pertains to the offsite street access requirement, this type of use is required to access a roadway network that was designed to handle the types of vehicles associated with this use. Due to the lack of information provided by the application, Staff cannot be certain that granting this waiver will not cause a detrimental effect on the overall design and development standards of the project, and will be in harmony with the general site layout and design details of the development.

3. The alternative design option recommended as part of the Waiver approval, if granted, will not adversely impact adjacent properties.

Applicant's Response: *This waiver is unique in that it is required due to the landscape service use, even when collocated with a wholesale nursery and controlled by area through the new regulations, is considered a commercial use and therefore requires access to a local commercial street. Considering this area is zoned as Agricultural Residential (AR), it contains both agricultural uses such as wholesale nurseries and commercial equestrian stables as well as residential properties. There are also governmental owned parcels that are designated for wildlife refuges and open space. Considering this, the intent does not seem to be the need to construct a Local Commercial street, but to evaluate the current conditions and determine if the existing nursery and landscape service uses is controlled in accordance with the recently adopted regulations and that the existing roadway condition is sufficient to provide safe and adequate access to the property. Based on this site having to comply with the controlled area for landscape services use, this site is considered to have 111 daily trips which will be the same, if not less, than the historic traffic volume from this property. These daily trips are considered acceptable by the Traffic Division as determined through the review of the traffic study and Final Site Plan. Accordingly, granting this waiver has no adverse impact on adjacent properties.*

Staff Response: INCORRECT. This use introduces truck traffic and heavy machinery into a residential community and though rural with fairly low traffic, the roadway does not meet the minimum standard in terms of width or potentially strength and durability to handle large vehicles. Reconstructing the roads to meet the County's minimum standard would ensure the roadways would be designed to handle large vehicles, which would reduce the chance of roadway failure. The 12 foot wide lanes would also allow multiple vehicles to be on the road at the same time in a safe manner. Due to the lack of information provided by the application, Staff cannot be certain that the alternative design option recommended as part of the Waiver approval, if granted, will not adversely impact adjacent properties

4. The Waiver shall not be injurious to the area involved or otherwise detrimental to the public welfare.

Applicant's Response: *Access to this property is from Park Lane which is considered to be a street open to the public but within a private ingress and egress easement, owned and the maintenance responsibility of each property owner. Given this circumstance, the condition of the street varies greatly from the subject site to Heritage Farms which has already been determined as a Non-Plan Collector. Various property owners through the years have made improvement to the roadway which was historically a dirt surface but now has sections of the roadway have been improved with asphalt and millings to create a better driving surface. A consistent surface would be ideal but is difficult to manage and justify considering that there are several property owners with various interests who abut and own the roadway. The roadway in its current condition has provided access to all the owners and businesses within Heritage Farms for years and a result of the amended regulations, there have been landscape service businesses who have left the Heritage Farms area and therefore there is or will be less*

volume of traffic from this site and from the other collocated wholesale nursery/landscape service businesses in Heritage Farms. The roadway in its current state serves the uses in the area and waiving the requirements for a local commercial street through this agricultural residential area will maintain the rural character and not be detrimental to the public welfare.

Staff Response: INCORRECT. Staff requested a survey of the roadway along with an engineering statement that would have clarified the width of the pavement, width of the swales and pavement section. Due to the timeline established by F.S. 125.002, the applicant could have requested an extension and provided the requested information or taken the application to the Zoning Commission and Board of County Commissioners with the recommendation of denial by County Staff and the applicant opted for the latter. Further, this use introduces truck traffic and heavy machinery into a residential community and though rural with fairly low traffic, the roadway does not meet the minimum standard in terms of width or potentially strength and durability to handle large vehicles. Based on the lack of information provided by the applicant, Staff cannot agree that approving this waiver will not be injurious to the public or otherwise detrimental to the public welfare.

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CONDITIONS OF APPROVAL

Exhibit C Subdivision Waiver

ENGINEERING

1. Prior to January 30, 2022, the Property Owner shall reconstruct Park Lane and Heritage Farms Road from the project driveway to SR-7 to be consistent with the typical section for a Non-Plan Collector Roadway in the Land Development Division Design Standards Manual, or as otherwise allowed for by the County Engineer. (DATE: MONITORING – Eng)

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

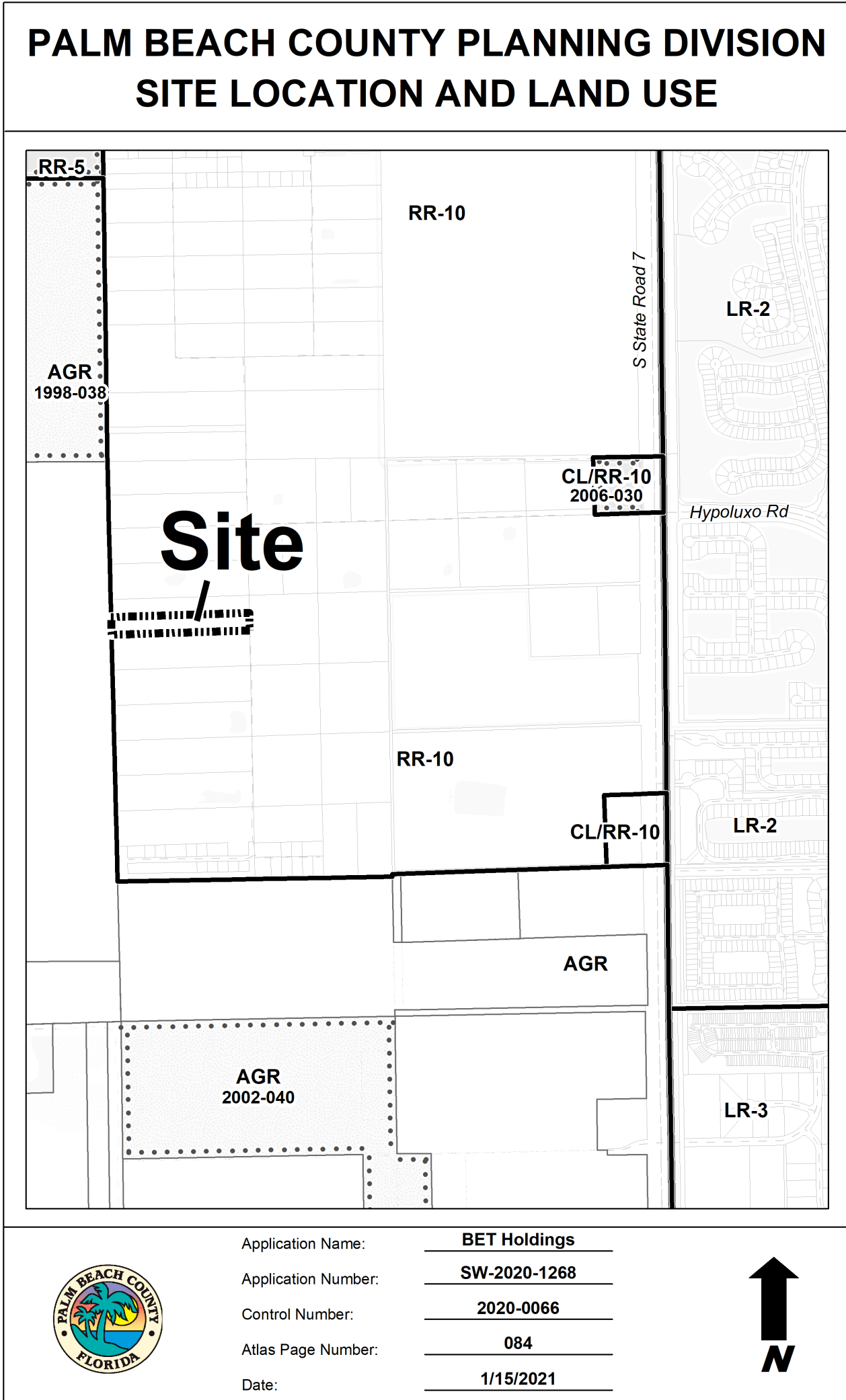


Figure 2 Zoning Quad Map

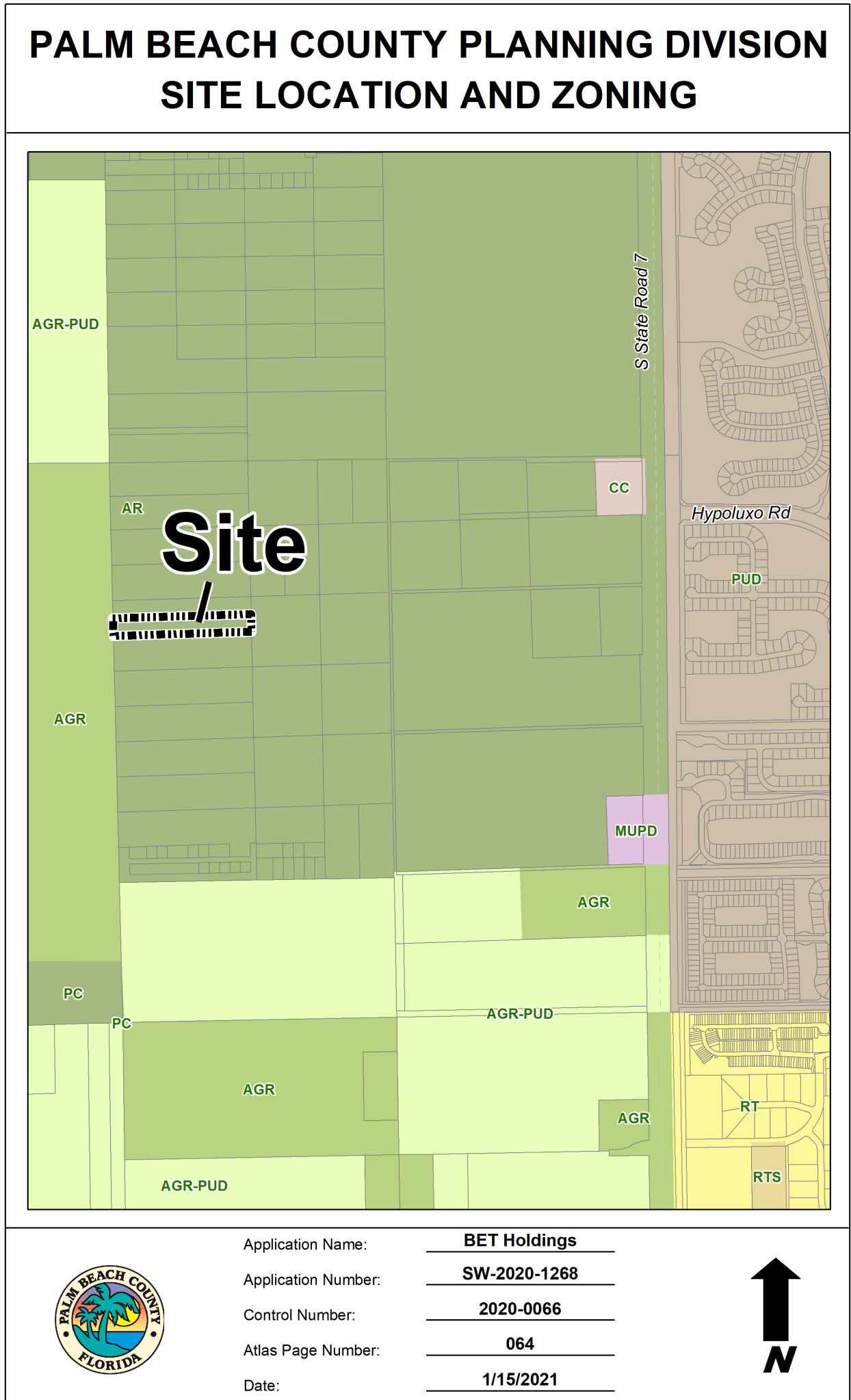


Figure 3 Aerial

PALM BEACH COUNTY PLANNING DIVISION SITE LOCATION



Application Name:	<u>BET Holdings</u>
Application Number:	<u>SW-2020-1268</u>
Control Number:	<u>2020-0066</u>
Atlas Page Number:	<u>084</u>
Date:	<u>1/15/2021</u>



BET HOLDINGS JUSTIFICATION STATEMENT

Request(s): Type 2 Waiver
Control No.: 2020-00066
Application No.: DRO-2020-00751
Submitted: August 3, 2020
Resubmittal:



Urban Planning and Design
Landscape Architecture
Communication Graphics

APPLICATION REQUEST AND PROJECT SUMMARY:

On behalf of BET Holdings, LLC ("Applicant"), this application requests approval for a Type 2 Waiver for Minimum Legal Access Standards related to a Collocated Wholesale Nursery/Landscape Services use in AR/RSA zoning district as described in Article 11.E.2.A-2.

SITE LOCATION & DESCRIPTION:

Location

This site is located at 7309 Park Lane Road which is located south of Heritage Farms Road, west of State Road 7 in unincorporated Palm Beach County under property control number 00-41-45-12-00-000-3040. The property consists of 5.19 acres.

Background & Purpose

As regulations for collocated Wholesale Nursery and Landscape Services were being discussed and amended over the past several years, the issue of access and compliance with Article 11 regulations was raised and ultimately determined that unless the access to these properties complied with Article 11 regulations, a Type 2 Waiver application must be processed and presented to the Board of County Commissioners for approval. These regulations only apply to this collocated use when the site is located within the AR/RSA zoning district. The ULDC was amended to include this application process.

Accordingly, it has been determined that the Landscape Service use, even when collocated with Wholesale Nursery, is a commercial use and required to have access from a Local Commercial Street per Art. 11, Table 11.E.2.A-2 – Chart of Minor Streets as well as the Engineering Design Standard Drawing (No. 100.7A) for a 80' Non-Plan Collector Street. In general, the requirements of this street include the following:

- minimum right of way width of 80 feet
- minimum pavement width of 24 feet
- Wearing surface with specified courses of materials per Table 100.9 of the Engineering Design Standards
- compacted 2' paved shoulders
- 5' wide sidewalk
- Grass swale area

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Boynton Beach Office: 508 E. Boynton Beach Blvd. Boynton Beach, FL 33435 P. 561-736-8838

www.udsfllorida.com LCC000035

The purpose and intent of this waiver request is to evaluate and consider the conditions of the existing roadway relative to the typical design standards of an 80' Non-Plan Collector Street and the associated traffic generated from the collocated wholesale nursery/landscape service use.

This site is currently operating as a collocated Wholesale Nursery/Landscape Service site and is under Code Enforcement action to proceed through the required application process to establish this collocated use in accordance with the regulations that were recently adopted by the Board of County Commissioners. A Final Site Plan application was submitted on May 4, 2020 to request the necessary approval. This application is being submitted in response to a review comment from the Land Development Division as a requirement prior to the approval of the Final Site Plan application.

Site Description

As indicated, the subject site is and has been operating as a wholesale nursery with landscape service business for many years. The Final Site Plan that has been submitted will be required to comply with the recently adopted regulations which will limit the area for landscape services and more specifically the area where landscape service vehicles are parked. Accordingly, this in itself will address the impacts on the street.

The site consists of a wholesale nursery use with predominate growing area and supportive structures for an office space and storage. The site also has the allowed area for landscape services and within that area, outdoor storage which is the designation for the area to park the landscape service vehicles. As indicated in the traffic study that was submitted with the Final Site Plan application, this site generates 111 daily trips onto Park Lane. The trips from Park Lane then intersect with Heritage Farms Road and ultimately disperse onto State Road 7. Heritage Farms Road is the only means of access to Park Lane and the properties in Heritage Farms.

TYPE 2 WAIVER - STANDARDS:

A Type 2 Waiver must address and satisfy the three (3) standards of ULDC Art. 2.B.7.D.3 and an added standard in Article 11. The specific request of the waiver is outlined in the table below followed by a response to each of the four standards.

Type 2 Waiver Chart

Construction Standard	Requirement	Provided	Waiver
Min. ROW Width	80'	110' Ingress/Egress Easement	Complies - no waiver required
Min. Pavement Width	24'	Varies (23' – 25' adjacent to site)	Allow as existing
Shoulders	2' compacted	None	Allow as existing
Sidewalk	5'	None	Allow as existing
Swale	15'	Varies	Allow as existing
Wearing Surface	Materials per Table 100.9	Varies	Allow as existing

2

Standards - Type 2 Waiver

1. **The Waiver does not create additional conflicts with other requirements of the ULDC, and is consistent with the stated purpose and intent for the zoning district or overlay;**

RESPONSE: This property has been operating as a wholesale nursery with landscape service use for many years and is under review of a Final Site Plan application to bring the site into compliance with regulations recently adopted by the Board of County Commissioners. The purpose and intent of the new regulations is to control the use of landscape services when collocated with wholesale nursery. The review of the Final Site Plan will require compliance with other requirements of the ULDC zoning, overlay and related development regulations. This waiver is being requested in response to a review comment from the Land Development Division as part of the Final Site Plan. With the granting of this waiver and approval of the Final Site Plan, all applicable requirements of the ULDC will have been determined to be met for this property.

It should also be noted that should the waiver NOT be granted, the alternative is for the applicant to construct a local commercial roadway through an established rural area which contradicts the intent of the zoning district, established for a mix of agricultural residential uses. The collocated use has been determined to be allowed by the ULDC with controls and limitations of the landscape service component by the regulations. These regulations will control the volume of traffic which has been the concern throughout the regulation amendment process. It would be more in conflict with the intent of the zoning district to require the construction of the roadway improvements required for a local commercial roadway.

2. **The Waiver will not cause a detrimental effect on the overall design and development standards of the project, and will be in harmony with the general site layout and design details of the development; and,**

RESPONSE: This waiver pertains to offsite street requirements and will compliment and support the collocated wholesale nursery and landscape service use which is under review through the Final Site Plan process rather than cause a detrimental effect on the design of the project. To grant the waiver and allow the road to remain in its rural condition is more in harmony with the area than to require the improvements of the Local Commercial street.

3. **The alternative design option recommended as part of the Waiver approval, if granted, will not adversely impact adjacent properties.**

RESPONSE: This waiver is unique in that it is required due to the landscape service use, even when collocated with a wholesale nursery and controlled by area through the new regulations, is considered a commercial use and therefore requires access to a local commercial street. Considering this area is zoned as Agricultural Residential

(AR), it contains both agricultural uses such as wholesale nurseries and commercial equestrian stables as well as residential properties. There are also governmental owned parcels that are designated for wildlife refuges and open space. Considering this, the intent does not seem to be the need to construct a Local Commercial street, but to evaluate the current conditions and determine if the existing nursery and landscape service uses is controlled in accordance with the recently adopted regulations and that the existing roadway condition is sufficient to provide safe and adequate access to the property. Based on this site having to comply with the controlled area for landscape services use, this site is considered to have 111 daily trips which will be the same, if not less, than the historic traffic volume from this property. These daily trips are considered acceptable by the Traffic Division as determined through the review of the traffic study and Final Site Plan. Accordingly, granting this waiver has no adverse impact on adjacent properties.

4. The Waiver shall not be injurious to the area involved or otherwise detrimental to the public welfare.

RESPONSE: Access to this property is from Park Lane which is considered to be a street open to the public but within a private ingress and egress easement, owned and the maintenance responsibility of each property owner. Given this circumstance, the condition of the street varies greatly from the subject site to Heritage Farms which has already been determined as a Non-Plan Collector. Various property owners through the years have made improvement to the roadway which was historically a dirt surface but now has sections of the roadway have been improved with asphalt and millings to create a better driving surface. A consistent surface would be ideal but is difficult to manage and justify considering that there are several property owners with various interests who abut and own the roadway. The roadway in its current condition has provided access to all the owners and businesses within Heritage Farms for years and a result of the amended regulations, there have been landscape service businesses who have left the Heritage Farms area and therefore there is or will be less volume of traffic from this site and from the other collocated wholesale nursery/landscape service businesses in Heritage Farms. The roadway in its current state serves the uses in the area and waiving the requirements for a local commercial street through this agricultural residential area will maintain the rural character and not be detrimental to the public welfare.

CONCLUSION

The information above provides the details of a Type 2 Waiver request to allow the existing road to continue to provide this area with adequate access and not require the construction of all improvements of a local commercial roadway for access to this property with collocated wholesale nursery/landscape service use.

On behalf of the Applicant, we respectfully request the staff review of this Type 2 Waiver request and support to be presented to the Board of County Commissioners. Should you have any questions regarding this application, please contact Christi Tuttle at Urban Design Studio (Boynton Beach), 561-736-8838.