

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

**Application No.:** ZV/ABN/DOA-2021-00425  
**Application Name:** Polo Legacy MXPDP  
**Control No./Name:** 2007-00096  
**Applicant:** Banyan Polo, LLC  
**Owners:** Mattamy Palm Beach LLC  
Banyan Polo LLC  
LWPR, LLC  
**Agent:** Urban Design Studio - Ken Tuma & Sandra Megrue  
**Telephone No.:** (561) 366-1100  
**Project Manager:** James Borsos, Site Planner II

**TITLE:** a Type 2 Variance **REQUEST:** to reduce a divider median. **TITLE:** a Development Order Abandonment **REQUEST:** to abandon a Class A Conditional Use for a Type 1 Restaurant with Drive-through. **TITLE:** a Development Order Amendment **REQUEST:** to modify the Site Plan; add and delete square footage; and to add, delete or modify Uses.

**APPLICATION SUMMARY:** Proposed is a Type 2 Variance, Development Order Abandonment and a Development Order Amendment for the Polo Legacy MXPDP development. The site has been previously approved for a mixed-use, residential-commercial development.

The Applicant is proposing to modify commercial Buildings B, D and E within the existing Mixed Use Planned Development (MXPDP). Building modifications include expanding Building B from 5,660 square feet (sq. ft.) to 10,289 sq. ft. (+4,629 sq. ft.) and replacing the Type 2 Restaurant use with Retail; reducing Building D (Retail) from 29,629 sq. ft. to 21,659 sq. ft. (-7,970 sq. ft.); and, expanding Building E from 2,500 sq. ft. to 3,690 sq. ft. (+1,190 sq. ft.) and replacing the Type 1 Restaurant with Drive-Through use (subject to the requested Development Order Abandonment) with a Car Wash. Overall, the Commercial area within the MXPDP will consist of 5 buildings, for a total of 46,849 sq. ft. No Modifications are proposed to the Residential development. Overall, the Preliminary Site Plan indicates a total of 349 parking spaces for the Commercial development.

Access to the site will remain unchanged for the overall site, with two access points to Lake Worth Road, and two access points to Polo Road.

**SITE DATA:**

Location:	Southwest corner of Lake Worth Road and Polo Road.
Property Control Number(s):	00-42-44-29-13-001-0010 / 0020 / 0030 (Affected Area only)
Existing Future Land Use Designation:	Commercial High, with an underlying MR-5 (CH/5)
Proposed Future Land Use Designation:	No Change
Existing Zoning District:	Mixed Use Planned Development District (MXPDP)
Proposed Zoning District:	No Change
Total Acreage:	38.54-acres
Affected Acreage:	13.93-acres
Tier:	Urban/Suburban
Overlay District:	N/A
Neighborhood Plan:	West Lake Worth Road Neighborhood Plan
CCRT Area:	N/A
Municipalities within 1 Mile:	N/A
Future Annexation Area:	Greenacres

**RECOMMENDATION:** Staff recommends approval of the requests subject to the Conditions of Approval as indicated on Exhibit C-1 and C-2.

**PUBLIC COMMENT SUMMARY:** At the time of publication, Staff had received 0 contacts from the public regarding this application.

**PROJECT HISTORY:**

Application No.	Request	Resolution	Approval Date
ZV/PDD/CA-2018-01515	A Type 2 Variance to reduce rear setback for Townhouses; and, modify Mixed Use Planned Development land use mix percentages	ZR-2019-0913	April 4, 2019
	To allow a rezoning from Agricultural Residential to the Mixed Use Planned Development Zoning District; a Class A Conditional Use to allow retail gas and fuel sales with convenience store; a Class A Conditional Use to allow a Type 1 Restaurant with Drive-through (Bldgs. C & E)	R-2019-0558; R-2019-0559; R-2019-0560; R-2019-0561	April 25, 2019
EAC-2019-02324	To amend Conditions of Approval for Class A Conditional Use for a Retail Gas and Fuel Sales with Convenience Store; Amend Conditions of Approval for Class A Conditional Use for a Type 1 Restaurant with Drive-through (Building C); and, Amend Conditions of Approval for a Mixed Use Planned Development	R-2020-0339; R-2020-0340; R-2020-0341	March 26, 2020
W-2020-00790	Type 2 Waiver to allow 24 Hour Operations for a non-residential use within 250 feet of land with Residential Future Land Use designation or Use.	R-2020-1780	November 23, 2020

**SURROUNDING LAND USES:**

**NORTH (across Lake Worth Road):**

FLU Designation: Multiple Land Use with Commercial Low-Office and underlying 5 units per acre (MLU, CL-O/5)  
Zoning District: Multiple Use Planned Development (MUPD)  
Supporting: Residential/Commercial (Harbor Chase at Wellington Crossing PUD, Control No. 2004-00009)

**SOUTH:**

FLU Designation: Medium Residential (MR-5)  
Zoning District: Residential Planned Unit Development (PUD)  
Supporting: Residential (Gulfstream PUD, Control No. 2008-00297)

**EAST (across Polo Road):**

FLU Designation: Multiple Land Use with Commercial High (MLU-CH/5)  
Zoning District: Mixed Use Planned Development (MUPD)  
Supporting: Residential (Polo Gardens MUPD, Control No. 20013-00296)

**WEST:**

FLU Designation: Low Residential (LR-2)  
Zoning District: Residential Planned Unit Development (PUD)  
Supporting: Residential (Cedar Creek PUD, Control No. 2001-00016)

**TYPE 2 VARIANCE SUMMARY:**

Staff have confirmed that a previously requested Variance for Dumpster planting is no longer required. The Justification Statement still reflects this request.

#	ULDC Article	REQUIRED	PROPOSED	VARIANCE
V.1	Table 7.C.4.A, Landscape Island and Divider Median	10 foot divider median	5 foot divider median	-5 feet (50% reduction)

**FINDINGS: Type 2 Variance Standards:** When considering a Development Order application for a Type 2 Variance, the Zoning Commission shall consider Standards a through g listed under Article 2.B.7.E.6, Standards for Zoning or Subdivision Variance. The Standards and Staff Analyses are as indicated below. A Type 2 Variance that fails to meet any of these Standards shall be deemed adverse to the public interest and shall not be approved.

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

**V.1 – YES:** The development plan for Polo Legacy MXPDP is unique in that it provides for a compact urban design concept that is not utilized in the typical suburban development design. This causes the typical user within the development to meet challenges of design created by site constraints associated with other approved site improvements outside the affected area. For this Variance request, special circumstances exist as the access to the site is limited by internal driveways that have been previously established based on the approved access points to the FDOT controlled Lake Worth Road and PBC controlled Polo Road. The site is additionally constrained by the surrounding proposed development within the commercial area, which further restricts the design of the site. This compounded with the challenges presented with complying with the design requirements of the ULDC for a car wash, the Applicant has presented a design for the site that requires the minimum need for Variance internal to the functions of the site based on these special conditions.

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

**V.1 – YES:** The special circumstances here is a result of current trends of the more compact car wash industry which uses creativity in the design and operational function of a site to provide for the most efficient use of the land. The ULDC requirement for a 10 ft. divider median width between internal functions restriction that, in this case, if complied with, would require the user to reduce the number of queuing lanes, which from an operational standpoint could cause vehicle to stack outside of the site and on the adjacent drive isles within the commercial development.

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:***

**V.1 – YES:** The Palm Beach County Zoning Commission has recently granted similar variances for comparable developments containing other automated car wash operations with limited and constrained site conditions. The granting of this Variance would therefore not confer any special privilege.

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:***

**V.1 – YES:** In this particular case, and with the restrictions of the site based on prior approvals and designs, the literal interpretation by PBC for the requirement of a 10 ft. divider median between an area used by patrons to detail a parked vehicle and an adjacent low-speed queuing lane would require the user to design the site with potential implications of overflow into the adjacent drive isles creating an unnecessary and undue hardship for the function of the commercial center as a whole. The Applicant believes that the intent of the ULDC is being met with the proposed design as it continues to provide for a safe and efficient use of the affected area. The Applicant continues to meet the plant material requirements in the divider median albeit it is reduced in width.

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

V.1 – YES: The granting of the requested variance to allow for a 5 ft. reduction of an internally functioning divider median for this site is the minimum Variance needed to make reasonable use of the site area due to the design constraints created by other approved site improvements, where construction has been completed or is under permit review,

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

V.1 – YES: Pursuant to ULDC Landscape Requirements for On-Site Parking, Articles 7.C.4.A. and 7.C.4.B, the purpose for the 10 ft. divider median in vehicular use areas is to channel traffic circulation effectively and safely, and to provide an adequate width to meet landscaping requirements and allow for a healthy growth area. For the purposes of parking areas with drive aisles and adjacent intersecting driveways, providing cues to the driver on how to traverse these areas is important to maintain that efficient and safe use. And for that purpose, the need for the 10 ft. divider median widths are apparent as they provide for those cues by providing for separations in the vehicular landscape. However, due to site constraints and the design provided for this particular car wash site, the Applicant has demonstrated there is not the same need for a 10 ft. divider median width. Providing a 10 ft. separation between the car wash queuing lane (where the patron’s vehicle is mostly stationary) and adjacent car wash vacuum parking space (use specific to the same patron to detail their parked vehicle), is non-functional as it relates to the safe and efficient use of the areas. And although the commercial development provides for these required 10 ft. divider medians throughout the site, it is the intent of the ULDC to require these separations for internal functions to a singular use, such as the proposed car wash. The Applicant continues to meet the plant material requirements in the reduced width divider median, which provides a visual clue of separation to the drivers.

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

V.1 – YES: The granting of the requested variance does not cause injury to the area nor is it detrimental to the public welfare. This is a request to reduce a divider median internal to a specific use where vehicular traffic is controlled.

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**FINDINGS: Standards for a Development Order Amendment:** When considering a DO application for a Development Order Amendment, the BCC or ZC shall consider Standards a – h listed in ULDC Article 2.B.7.B.2, Standards. The Standards and Staff Analyses are indicated below. An application which fails to meet any of these Standards shall be deemed adverse to the public interest and shall not be approved.

a. **Consistency With the Plan – The proposed use or amendment is consistent with the purposes, goals, objectives and policies of the Plan, including standards for building and structural intensities and densities, and intensities of use.**

PLANNING DIVISION COMMENTS:

The proposed use or amendment is consistent with the Goals, Objectives and Policies of the Comprehensive Plan, including previous Land Use Amendments, densities and intensities of use.

○ **Prior Land Use Amendments:** The site has been the subject of two previous Large Scale Future Land Use Atlas (FLUA) amendments. The first amendment, known as Lake Worth Commercial (LGA-2008-009), was adopted with conditions via Ord. 2008-048 and amended the land use from Low Residential, 2 units per acre (LR-2) to Commercial High with an underlying LR-2 (CH/2). A subsequent land use amendment, Lake Worth Commercial (LGA-2017-013), was adopted with conditions via Ord. 2017-038 and amended the land use from Commercial High with an underlying 2 units per acre (CH/2) to Commercial High with an underlying 5 units per acre (CH/5). The Ordinance contained the following conditions:



1. The subject site is limited to maximum of 396,000 square feet of non-residential uses or equivalent traffic generating uses.
2. Deleted
3. The development of the subject site shall adhere to the following design criteria and provide for a mixture of uses (commercial and residential) in accordance with the requirements established in the Unified Land Development Code (ULDC).
  - a. The project shall have a mix of residential and commercial uses, with institutional and other accessory/ancillary/incidental uses permitted. Flexibility with the site's allocation and location of identified uses may be considered as permitted by the ULDC.
  - b. The project shall provide public usable open space and/or institutional uses that may promote social and cultural activities. At least 5% of the project shall be prominently located and designated as public usable open space to create squares, greens and/or plazas.
  - c. The project shall have pedestrian oriented design that includes internal street networks. Vehicular and/or pedestrian connections shall be provided to all existing and future contiguous development where feasible. Additionally, the design shall incorporate human-scale elements along streets and in common areas that includes but is not limited to: seating, landscaping, lighting and water or art features.
  - d. Parking in front of non-residential buildings shall be strictly limited and dispersed to strengthen the pedestrian system.
  - e. The project shall demonstrate a horizontal integration of uses.
  - f. No single tenant shall exceed 65,000 square feet and shall not be a big box. Single large tenants must have architectural facade treatments or liner tenants to reduce large single use frontage facades along streets. All non-residential buildings shall provide four-sided architecture.
  - g. The interconnected vehicular and pedestrian circulation system shall provide on-street parking and access to transit stops and off-site pedestrian and bicycle systems where feasible.
4. Residential density shall be limited to a maximum of five (5) dwelling units per acre, with no density increases permitted above five (5) dwelling per acre on site.
5. The Zoning development order shall require at least 25% of the residential units above 2 units per acre as workforce housing units subject to the following requirements:
  - a. The property owner shall provide these units on site, and between 60-140% of the Median Household Income ranges for the County, in all four WHP ranges (60-80%, >80-100%, >100 -120%, and >120-140%); and,
  - b. The workforce housing units shall be provided in all unit types.

The proposed request is consistent with the Commercial High (CH) and Medium Residential, 5 units per acre (MR-5) land use designations and continues to comply with all prior Conditions of Approval contained in Ord. 2017-38. The gas station, car wash, retail uses, and type 1 restaurants utilize the CH designation, and the 184 residential units utilize the underlying MR-5 designation. Development of the site as proposed in this request provides greater than the 5% minimum useable open space requirement, horizontally integrates uses, and integrates vehicular and pedestrian circulation and interconnectivity. Single tenants do not exceed 65,000 square feet and big box stores are not part of this request. No changes are proposed to the residential portion of the project. Therefore, the request is generally consistent with all prior conditions applied to this site.

- *Intensity:* The request proposes a 2,151 square foot reduction in non-residential square footage from the currently approved 51,000 square feet to 48,848 square feet, which equates to a Floor Area Ratio (FAR) of approximately .03 (48,848 / 1,678,737 square feet or 38.54 acres = .029 or

.03 rounded up). Per Condition 1 of the Ordinance, the maximum allowable square footage for non-residential uses is 396,000 square feet. The request for a total of 48,848 square feet is below the 396,000 square foot maximum conditioned by Ord. 2017-038 and therefore complies.

- **Density:** This application does not seek to change the previously approved 184 residential units with a Workforce Housing obligation of 30 units utilizing the code that was in effect prior to October 2019, and is subject to the Conditions contained in Ord. 2017-038.

- **Special Overlay District/Neighborhood Plan/Planning Study Area:** The site is located within the boundaries of the West Lake Worth Road Neighborhood Plan. The Neighborhood Plan was received by the BCC via Resolution R-2009-2018 on November 19, 2009. The requested changes made part of this application are not in conflict with the neighborhood plan, and the preliminary plans continue to be generally consistent with neighborhood plan recommendations. To date, the Planning Division has not received a formal letter of support nor objection from the neighborhood group.

**b. Consistency with the Code - *The proposed amendment is not in conflict with any portion of this Code, and is consistent with the stated purpose and intent of this Code.***

- **Property Development Regulations (PDR):** The proposed redevelopment will meet all minimum PDR's as required by Art. 3.E.4.D – MXPDP Property Development Regulations. The overall site exceeds the minimum lot width, frontage and depth. The proposed structures exceed all minimum setback requirements from the property boundaries.

- **Use Regulations:** As previously mentioned, the Applicant proposes to abandon the Class A Conditional Use approval for a Type I Restaurant with Drive-through in Building E, modify the building and replace its use with a car wash. The square footage of Building E is proposed to increase from 2,500 sq. ft. to 3,690 sq. ft., a net increase of 1,190 sq. ft. Table 4.B.2.A. shows that a car wash is permitted by right in a MXPDP with a CH FLU. All other uses in the MXPDP non-residential component remain retail. These include the Class A Conditional Use of Retail Gas Fuel Sales with a Convenience Store in Building F and a Class A Conditional Use Type 1 Restaurant with drive-through in Building C. Neither of these buildings have any change in their square footages. Other buildings with square footage changes are retail Building B that was approved with 5,660 sq. ft. and is now proposed to continue with retail at 10,289 sq. ft., an increase of 4,629 sq. ft.; and retail Building D which was approved at 29,629 sq. ft. and is now proposed to continue with at 21,659 sq. ft. (19,209 sq. ft. in Phase I and 2,450 sq. ft. in Phase II), a decrease of 7,970 sq. ft.

- **Access:** Access to the site will remain unchanged and will be provided from 2 access points from Lake Worth Road and 2 from Polo Road. These access points were previously approved on the north and east sides of the development.

- **Parking and Loading:** Per Art. 6.B.1.B, Minimum Parking and Loading Requirements, the proposed development is required to provide 604 parking spaces. The PSP indicates a total of 725 spaces, with 376 spaces to be provided for the residential use, and an additional 349 spaces to be provided for the non-residential component. Further, the Applicant is providing a total of 3 loading spaces for Buildings B, C and D.

- **Architectural Review:** The Applicant has requested to obtain architectural review approval at time of application for Building Permits for the proposed structures. No Architectural elevations have been provided at this time.

- **Landscape/Buffering:** The proposed development will maintain existing Conditions of Approval for Landscaping and Buffering which will remain unchanged from the approved plan. Per the requirements of the WLWRNP, the PSP indicates Primary and Secondary Buffers along perimeter roadways as follows: The PSP indicates a 30 foot primary buffer with meandering pathways along Lake Worth Road and Polo Road in accordance with the Code and consistent with the Neighborhood Plan.

- **Signs:** The Applicant is proposing minor changes to the Master Sign Program to exchange sign types within the commercial area. 2 freestanding signs are proposed to be changed to outparcel signs and 2 outparcel signs are proposed to be changed to freestanding signs. There are also slight location shifting and orientation changes, however, all signs continue to meet the ULDC requirements

for separation. The Applicant has also updated the proposed wall signage calculations to reflect the updated proposed building footprints and façade lengths which meet Code requirements.

- c. **Compatibility with Surrounding Uses** - *The proposed amendment is compatible, and generally consistent with existing uses and surrounding zoning districts, and is the appropriate zoning district for the parcel of land. In making this finding, the BCC may apply an alternative zoning district.*

All site design changes are interior to the commercial portion of the development. The subject site and proposed uses, with the exception of the car wash, were previously identified and approved as being compatible with surrounding uses. The redevelopment of the non-residential area has minimal on-site modifications proposed that could have an impact on surrounding uses beyond the previously approved application

There are no proposed changes to the overall perimeter landscape buffers, the residential areas and recreation pod; however, the Applicant has reduced the total amount of public open space by 464 sq. ft. to accommodate the proposed site design modifications. The development was approved with more than the required 5% of public open space of 1.93-acres. With the slight reduction, the development continues to meet the County’s requirements with 2.71-acres. The development area was determined to be compatible with surrounding uses with the approval of a Development Order Expedited Application Consideration (Class A Conditional Use for a Type 1 Restaurant with a Drive-through – Building C) by R-2020-0341 in March of 2020, and with the recreation area to be reduced slightly, as intended to be accommodated the site design modifications, Staff’s determination of compatibility remains the same.

- d. **Design Minimizes Adverse Impact** - *The design of the proposed use minimizes adverse effects, including visual impact and intensity of the proposed use on adjacent lands.*

The redesign of the commercial development portion of the MXPDP is minor in nature and is consistent with that original approved by the BCC. The design continues to minimize environmental impacts, such as water, air, stormwater management, and the natural functioning of the environment,

- e. **Effect on Natural Environment** – *The proposed amendment will not result in significantly adverse impacts on the natural environment, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.*

ENVIRONMENTAL RESOURCE MANAGEMENT COMMENTS:

VEGETATION PROTECTION: Native trees shall be relocated on the site.

WELLFIELD PROTECTION ZONE: The property is not located within a Wellfield Protection Zone.

IRRIGATION CONSERVATION CONCERNS AND SURFACE WATER: All new installations of automatic irrigation systems shall be equipped with a water sensing device that will automatically discontinue irrigation during periods of rainfall pursuant to the Water and Irrigation Conservation Ordinance No. 93 3. Any non stormwater discharge or the maintenance or use of a connection that results in a non stormwater discharge to the stormwater system is prohibited pursuant to Palm Beach County Stormwater Pollution Prevention Ordinance No. 93 15.

ENVIRONMENTAL IMPACTS: There are no significant environmental issues associated with this petition beyond compliance with ULDC requirements.

- f. **Development Patterns** – *The proposed amendment will result in a logical, orderly, and timely development pattern.*

The changes proposed for the non-residential portion of the overall site will have minimal impact on the development patterns for the overall area. As previously indicated, the non-residential component was previous approved for 6 buildings with a total of 49,000 sq. ft. to be used for retail, and a 2,000 sq. ft. cabana for a total of 51,000 sq. ft. in non-residential structures. With the exception of the net reduction of 2,151 sq. ft. from 3 of the non-residential buildings, and building footprint modifications,

the other 3 non-residential structures have maintained the same footprint as was previously approved.

This determination was made previously with the approval of R-2020-0341 in March of 2020 and this DOA proposes no changes to the Development Area acreage. Therefore, Staff's determination remains the same. Additionally, the sites to the north (Harbor Chase at Wellington MUPD) and to the east (Polo Gardens MUPD, have recently been approved for commercial developments which further provides evidence of a consistent development pattern in the immediate vicinity

**g. Adequate Public Facilities** – *The proposed amendment complies with Art. 2.F, Concurrency (Adequate Public Facility Standards).*

ENGINEERING COMMENTS:

The revised plan of development is expected to generate fewer trips than that already approved for this project. No new conditions of approval are necessary to meet Traffic Performance Standards.

The Property Owner shall record an access easement and any required maintenance and use documents prior to the final approval by the Development Review Officer.

PALM BEACH COUNTY HEALTH DEPARTMENT:

This project meets the requirements of the Florida Department of Health.

FIRE PROTECTION:

Staff has reviewed this application and have no comment.

SCHOOL IMPACTS: No Staff Review Analysis

PARKS AND RECREATION:

There are no proposed changes to the residential portion of this project as a result this Type 2 Variance request and as such Parks and Recreation have no comments.

**h. Changed Conditions or Circumstances** – *There are demonstrated changed site conditions or circumstances provided by the Applicant's Justification Statement that necessitate the amendment.*

Ownership for the affected area of the subject site has changed since the previously approval. Per provided warranty deeds, 4of the non-residential buildings (retail and car wash) and associated parking, were sold to a new owner, Banyan Polo, LLC (the Applicant) who has been working with a number of potential users who have requested these modifications as part of ongoing negotiations with the new property owner. The convenience store and gas station property has also been sold to a new owner (LWPR, LLC), however, there are no site design changes to that property. With regards to the abandonment of the Class A Conditional Use for the Type I Restaurant with Drive-through at Building E, the proposed car wash use, intended to replace the restaurant, has a lesser impact that the previously approved restaurant, and can provide service to vehicles that are owned by residents of the residential pod on the site as well as other nearby communities. Overall, there are demonstrated changed circumstances that necessitate the proposed amendment.

**CONCLUSION:** Staff has evaluated the standards listed under Article 2.B. and determined that there is a balance between the need for change and the potential impacts generated by this change. Staff is recommending approval of the request, subject to the recommended Conditions of Approval as indicated in Exhibit C-1 and C-2.

## CONDITIONS OF APPROVAL

### EXHIBIT C-1: Type 2 Variance - Concurrent

#### ALL PETITIONS

1. The approved Preliminary Site Plan is dated June 14, 2021. Modifications to the Development Order inconsistent with the Conditions of Approval, or changes to the uses or site design beyond the authority of the Development Review Officer as established in the Unified Land Development Code, must be approved by the Board of County Commissioners or the Zoning Commission. (ONGOING: ZONING - Zoning)

#### VARIANCE

1. The Development Order for this Variance shall be tied to the Time Limitations of the Development Order for ZV/ABN/DOA-2021-00425. The Property Owner shall secure a Building Permit or Commencement of Development to vest this Variance. (ONGOING: MONITORING - 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. (BLDGPMT/ONGOING: BUILDING DIVISION - Zoning)

#### 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 Board of County Commissioners 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.

## CONDITIONS OF APPROVAL

### EXHIBIT C-2: Development Order Amendment

#### ALL PETITIONS

1. Previous ALL PETITIONS Condition 1 of Resolution R-2020-339, Control No.2007-00096, which currently states:

The approved Preliminary Site Plan is dated February 11, 2019. Modifications to the Development Order inconsistent with the Conditions of Approval, or changes to the uses or site design beyond the authority of the Development Review Officer as established in the Unified Land Development Code, must be approved by the Board of County Commissioners or the Zoning Commission.

#### Is hereby amended to read:

The approved Preliminary Site Plan is dated June 14, 2021. Modifications to the Development Order inconsistent with the Conditions of Approval, or changes to the uses or site design beyond the authority of the Development Review Officer as established in the Unified Land Development Code, must be approved by the Board of County Commissioners or the Zoning Commission. (ONGOING: ZONING - Zoning)

2. Previous ALL PETITIONS Condition 2 of Resolution R-2020-339, Control No.2007-00096, which currently states:

All previous Conditions of Approval applicable to the subject property, as contained in Resolution R-2019-0559 (Control 2007-00096), have been consolidated as contained herein. The Property Owner shall comply with all previous Conditions of Approval and deadlines previously established by Article 2.E of the Unified Land Development Code and the Board of County Commissioners, unless expressly modified.

#### Is hereby amended to read:

All previous Conditions of Approval applicable to the subject property, as contained in Resolution R-2020-00339 (Control 2007-00096), have been consolidated as contained herein. The Property Owner shall comply with all previous Conditions of Approval and deadlines previously established by Article 2.E of the Unified Land Development Code and the Board of County Commissioners, unless expressly modified. (ONGOING: MONITORING - Zoning)

#### ENGINEERING

1. In order to comply with the mandatory Traffic Performance Standards, the Property Owner shall be restricted to the following phasing schedule:

a. No Building Permits for the site may be issued after December 31, 2025. A time extension for this condition may be approved by the County Engineer based upon an approved Traffic Study which complies with Mandatory Traffic Performance Standards in place at the time of the request. This extension request shall be made pursuant to the requirements of Art. 2.E of the Unified Land Development Code. (DATE: MONITORING - Engineering) (Previous ENGINEERING Condition 1 of Resolution R-2020-339, Control No. 2007-00096)

2. The Property Owner shall construct

i. Right turn lane west approach on Lake Worth Rd at western driveway entrance.

ii. Right turn lane west approach on Lake Worth Rd at eastern driveway entrance.

iii. Right turn lane west approach on Lake Worth Rd at Polo Rd.

iv. An extension of the east approach left turn lane on Lake Worth Rd at the western driveway entrance to a minimum of 400 ft with 50 ft taper or as approved by the Florida Department of Transportation.

v. Channelize the existing full median opening on Lake Worth at the western driveway entrance to prohibit left turns out from this driveway, as approved by the Florida Department of Transportation.

All the above turn lane lengths shall be as approved by the Florida Department of Transportation. 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.

- a. Permits required from Florida Department of Transportation for this construction shall be obtained prior to the issuance of the first building permit. (BLDGPMT: MONITORING - Engineering) [Note: COMPLETED]
- b. Construction shall be completed prior to the issuance of the first Certificate of Occupancy. (BLDGPMT/CO: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 2 of Resolution R-2020-339, Control No. 2007-00096)

3. The Property Owner shall construct

- i. Left turn lane south approach on Polo Rd at the northern driveway(main entrance).
- ii. Right turn lane north approach on Polo Rd at the northern driveway(main entrance).
- a. Permits required from Palm Beach County for this construction shall be obtained prior to the issuance of the first building permit. (BLDGPMT: MONITORING - Engineering) [Note: COMPLETED]
- b. Construction shall be completed prior to the issuance of the first Certificate of Occupancy. (BLDGPMT/CO: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 3 of Resolution R-2020-339, Control No. 2007-00096)

4. The Property Owner shall reconstruct the south approach of the intersection of Lake Worth Rd and Polo Rd to have 2 lefts, shared through/right, and 1 right turn lane. The design shall be as approved by the County Engineer, who may require to modify other approaches of the intersection to accommodate the above lanes.

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 and any modifications to the signal, if a signal is already in operation before the modification of the south approach.

- a. Permits required from Palm Beach County for this construction shall be obtained prior to the issuance of the first building permit. (BLDGPMT: MONITORING - Engineering) [Note: COMPLETED]
- b. Construction shall be completed prior to the issuance of the 99th Certificate of Occupancy (BLDGPMT/CO: MONITORING - Engineering) (Previous ENGINEERING Condition 4 of Resolution R-2020-339, Control No. 2007-00096)

5. The Property Owner shall make the following Proportionate Share payments, based on the following schedule. Note that while this proportionate share payment is based on proportionate cost of a specific roadway improvement, the County, in its sole discretion may apply such payment to one or more mobility improvements to regionally significant transportation facilities. The proportionate share payment shall be adjusted at the time of payment by the escalator calculation set forth in a later condition. Any road impact fees paid by the Developer on this project prior to this proportionate share payment will be applied as a credit toward the proportionate share payment. The proportionate share payment is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility in the area.

- a. No Building Permits for more than development generating more than 168 PM peak hour inbound trips shall be issued until the Property Owner makes a proportionate share payment in the amount of \$434,116. A potential development scenario generating the above trip could be a combination of 34 Apartment DU, 152 Townhome DU, 2500 sf Fast Food Restaurant w/out Drive-Through, 16 Fueling Position Gas Station, 3000 sf Convenience Store, and 3300 sf fast Food Restaurant w/out Drive-Through Window. (BLDGPMT: MONITORING - Engineering) (Previous ENGINEERING Condition 5 of Resolution R-2020-339, Control No. 2007-00096)

6. In recognition that construction prices may change over the life of the project, the proportionate share payments included in the above conditions shall be subject to the following escalator calculation:

Adjusted Payment (when payment is being made) = Original Payment Amount x Cost Adjustment Factor

Where,

Original Payment Amount = Proportionate Share Payment amount specified in the Proportionate Share Agreement

Cost Adjustment Factor = (Producer Price Index (PPI) for Commodities Code ID WPUIP2312301 (month of payment))/(Producer Price Index (PPI) for Commodities Code ID WPUIP2312301 (month of Prop Share Execution))

The Bureau of Labor Statistics Producer Price Index (PPI) for Commodities (Series ID: WPUIP2312301), can be found at <http://data.bls.gov/timeseries/WPUIP2312301>.

If at the time a Proportionate Share payment is due, the Commodities Code ID WPUIP2312301 is no longer used by the United States Bureau of Labor Statistics, the Adjusted Payment will be based on the Producer Price Index for non-residential commodities then in effect. In the event such an index is no longer in use, the Adjusted Payment will be based on the United States Bureau of Labor Statistics Consumer Price Index then in effect. (ONGOING: ENGINEERING - Engineering) (Previous ENGINEERING Condition 6 of Resolution R-2020-339, Control No. 2007-00096)

7. Every effort should be made to align the southernmost entrance on Polo Rd with the future anticipated east-west connector road between Polo Rd and Hooks Rd. If an alignment of this east-west connector road has been finalized before the final site plan approval of the subject site, the southernmost entrance must be aligned with the connector road. (DRO/ONGOING: ENGINEERING - Engineering) (Previous ENGINEERING Condition 7 of Resolution R-2020-339, Control No. 2007-00096)

8. Prior to the issuance of the first building permit, the Property Owner shall configure the property into a legal lot of record in accordance with provisions of Article 11 of the Unified Land Development Code or as otherwise approved by the County Engineer. (BLDGPMT: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 8 of Resolution R-2020-339, Control No. 2007-00096)

9. Prior to final approval of the Site Plan by the Development Review Officer, the Property Owner shall modify the site plan to show the access easement from Lake Worth Road to the residential portion of this project. (DRO: ENGINEERING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 9 of Resolution R-2020-339, Control No. 2007-00096)

10. The Property Owner shall provide to the Florida Department of Transportation (FDOT), a road right of way deed and all associated documents as required by FDOT for Lake Worth Road, 15 feet in width on an alignment approved by the FDOT or County Engineer

All right of way deed(s) and associated documents shall be provided and approved prior to the issuance of the first building permit. Right of way conveyance shall be along the project's entire frontage and shall be free and clear of all encumbrances and encroachments. Property Owner shall provide FDOT with sufficient documentation, including, at a minimum, sketch and legal description of the area to be conveyed, copy of the site plan, a Phase I Environmental Site Assessment, status of property taxes, statement from Tax Collector of delinquent and pro-rata daily taxes, full owner name(s) of area to be conveyed, and one of the following: title report, attorney's opinion of title, title commitment or title insurance policy, or as otherwise required and acceptable to FDOT. The Property Owner must warrant that the property being conveyed to FDOT meets all appropriate and applicable environmental agency requirements. In the event of a determination of contamination which requires remediation or clean up on the property now owned by the Property Owner, the Property Owner agrees to hold the County and FDOT harmless and shall be responsible for all costs of such clean up, including but not limited to, all applicable permit fees, engineering or other expert witness fees including attorney s fees as well as the actual cost of the clean up. Thoroughfare Plan Road right of way conveyances shall be consistent with Palm Beach County's Thoroughfare Right of Way Identification Map and shall include where appropriate, as determined by the County Engineer, additional right of way for Expanded Intersections and Corner Clips. The Property Owner shall coordinate conveyance of right of way directly with FDOT and shall provide evidence to Palm Beach County Land Development Division once conveyance has been completed. (BLDGPMT: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 10 of Resolution R-2020-339, Control No. 2007-00096)



11. Prior to the issuance of the first building permit or within ninety (90) days of a request by the County Engineer, whichever shall occur first, the Property Owner shall provide to Palm Beach County Right of Way Section of Roadway Production Division by warranty deed additional right of way for the construction of a right turn lane on Polo Road at the project's entrance road. This right of way shall be a minimum of 280 feet in storage length, a minimum of twelve feet in width and a taper length of 50 feet, or as approved by the County Engineer. Additional width may be required to accommodate paved shoulders. The right of way shall continue across the project entrance. This additional right of way shall be free of all encumbrances and encroachments and shall include Corner Clips where appropriate, as determined by the County Engineer. Property Owner shall provide Palm Beach County with sufficient documentation acceptable to the Right of Way Section to ensure that the property is free of all encumbrances and encroachments, including a topographic survey. The Property Owner must further warrant that the property being conveyed to Palm Beach County meets all appropriate and applicable environmental agency requirements. In the event of a determination of contamination which requires remediation or clean up on the property now owned by the Property Owner, the Property Owner agrees to hold the County harmless and shall be responsible for all costs of such clean up, including but not limited to, all applicable permit fees, engineering or other expert witness fees including attorney's fees as well as the actual cost of the clean up. The Property Owner shall not record the required right of way or related documents. After final acceptance of the location, legal sketches and dedication documents, Palm Beach County shall record all appropriate deeds and documents. (BLDGPMT: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 11 of Resolution R-2020-339, Control No. 2007-00096)

## 12. MAJOR THOROUGHFARE ROAD DISCLOSURE

a. Prior to the recordation of the first plat, the Property Owner shall include in the homeowners documents and all sales contracts, as well as all sales brochures, Master Plans and related Site Plans or Subdivision Plans, a disclosure statement identifying Polo Road as a planned thoroughfare roadway adjacent to or through this property. This shall also include the ultimate number of lanes for the road(s). Information which appears in written form shall appear in bold print. (PLAT: ENGINEERING - Engineering) (Previous ENGINEERING Condition 12 of Resolution R-2020-339, Control No. 2007-00096)

## LANDSCAPE - PERIMETER

1. PERIMETER LANDSCAPING ALONG THE WEST PROPERTY LINE (COMMERCIAL ABUTTING EXISTING RESIDENTIAL) In addition to Code requirements, landscaping along the west property line shall be upgraded to include:

- a. a six (6) foot high opaque concrete panel wall;
- b. a continuous hedge installed and maintained at a minimum height of four (4) feet on the interior and exterior sides of the wall; and,
- c. Prior to Approval by the Development Review Officer, the Final Site Plan shall be revised to indicate the wall and hedges in accordance with this Condition of Approval. (BLDGPMT/DRO: ZONING - Zoning) [Note: COMPLETED] (Previous LANDSCAPE - PERIMETER Condition 1 of Resolution R-2020-339, Control No.2007-00096)

2. PERIMETER LANDSCAPING ALONG THE WEST PROPERTY LINE (ABUTTING RESIDENTIAL) In addition to Code requirements, landscaping along the entire west property line shall be upgraded to include:

- a. all canopy trees shall be installed at minimum height of sixteen (16) feet;
- b. one palm or pine for each twenty-five (25) linear feet of the property line, with a maximum spacing of fifty-five (55) linear feet between clusters;
- c. credit may be given for existing or relocated trees provided they meet the Unified Land Development Code requirements.
- d. Prior to Approval by the Development Review Officer, the Final Site Plan shall be revised to indicate compliance with this Condition of Approval. (BLDGPMT/DRO: ZONING - Zoning) [Note: COMPLETED] (Previous LANDSCAPE - PERIMETER Condition 2 of Resolution R-2020-339, Control No.2007-00096)

## PARKS

1. No more than 37 Certificates of Occupancy for the residential units shall be issued until the recreational improvements have been completed in their entirety and open for use and accessible to the residents, unless a phasing plan for completion of the required recreation area is agreed to and

approved by the Parks and Recreation Department. (CO: MONITORING - Parks and Recreation)  
(Previous PARKS Condition 1 of Resolution R-2020-339, Control No. 2007-00096)

## **PLANNED DEVELOPMENT**

1. The Development Review Officer may approve an Administrative Modification to the Final Site Plan that exceeds the maximum 5 percent increase in square footage, as follows: to relocate up to 3,640 square feet (sq. ft.) from Buildings B and C to Building D, provided that the gross floor area of the proposed non-residential buildings is not less than 51,000 sq. ft. total. All modifications shall be in accordance with the all other limitation s and criteria established in Table 2.C.5.B, Administrative Modifications to Prior Development Orders. (DRO: ZONING - Zoning) [Note: COMPLETED] (Previous PLANNED DEVELOPMENT Condition 1 of Resolution R-2020-339, Control No. 2007-00096)

## **PLANNING**

1. Per LGA 2017-13, Ordinance 2017-38 condition 1: The subject site is limited to maximum of 396,000 square feet of non-residential uses or equivalent traffic generating uses. (ONGOING: PLANNING - Planning) (Previous PLANNING Condition 1 of Resolution R-2020-339, Control No.2007-00096)

2. Per LGA 2017-13, Ordinance 2017-38 condition 2: The development of the subject site shall adhere to the following design criteria and provide for a mixture of uses (commercial and residential) in accordance with the requirements established in the Unified Land Development Code (ULDC).

a. The project shall have a mix of residential and commercial uses, with institutional and other accessory/ancillary/incidental uses permitted. Flexibility with the site's allocation and location of identified uses may be considered as permitted by the ULDC.

b. The project shall provide public usable open space and/or institutional uses that may promote social and cultural activities. At least 5% of the project shall be prominently located and designated as public usable open space to create squares, greens and/or plazas.

c. The project shall have pedestrian oriented design that includes internal street networks. Vehicular and/or pedestrian connections shall be provided to all existing and future contiguous development where feasible. Additionally, the design shall incorporate human-scale elements along streets and in common areas that includes but is not limited to: seating, landscaping, lighting and water or art features.

d. Parking in front of non-residential buildings shall be strictly limited and dispersed to strengthen the pedestrian system.

e. The project shall demonstrate a horizontal integration of uses.

f. No single tenant shall exceed 65,000 square feet and shall not be a big box. Single large tenants must have architectural facade treatments or liner tenants to reduce large single use frontage facades along streets. All non-residential buildings shall provide four-sided architecture.

g. The interconnected vehicular and pedestrian circulation system shall provide on-street parking and access to transit stops and off-site pedestrian and bicycle systems where feasible. (ONGOING: PLANNING - Planning) (Previous PLANNING Condition 2 of Resolution R-2020-339, Control No.2007-00096)

3. Per LGA 2017-13, Ordinance 2017-38 condition 3: Residential density shall be limited to a maximum of five (5) dwelling units per acre, with no density increases permitted above five (5) dwelling per acre on site. (ONGOING: PLANNING - Planning) (Previous PLANNING Condition 3 of Resolution R-2020-339, Control No.2007-00096)

4. Per LGA 2017-13, Ordinance 2017-38 condition 4: The Zoning development order shall require at least 25% of the residential units above 2 units per acre as workforce housing units subject to the following requirements:

a. The property owner shall provide these units on site, and between 60-140% of the Median Household Income ranges for the County, in all four WHP ranges (60-80%, >80-100%, >100 -120%, and >120-140%); and,

b. The workforce housing units shall be provided in all unit types.  
(ONGOING: PLANNING - Planning) (Previous PLANNING Condition 4 of Resolution R-2020-339, Control No.2007-00096)

5. Prior to the issuance of the first Building Permit, the applicant shall submit architecture plans, to be four sided for the non-residential buildings, per FLUA amendment LGA 2017-13, Ordinance 2017-38 condition 2.f. (BLDGPM: MONITORING - Planning) (Previous PLANNING Condition 5 of Resolution R-2020-339, Control No.2007-00096)

6. Prior to final approval by the Development Review Officer (DRO) , the applicant shall submit a detail on the regulating plans demonstrating, the area along the Compatibility buffer adjacent to the Rec Pod, that provides visual permeability and maintains the minimum code requirement with decorative fence. (DRO: PLANNING - Planning) [Note: COMPLETED] (Previous PLANNING Condition 6 of Resolution R-2020-339, Control No.2007-00096)

7. A Pedestrian connection shall be required to the adjacent residential project shown, as a stub-out on the southwestern portion of the project, that may include, but is not limited to, a bridge or gate for functionality, if written approval has been obtained by the adjacent residents Homeowners Association. (ONGOING: PLANNING - Planning) [Note: COMPLETED] (Previous PLANNING Condition 7 of Resolution R-2020-339, Control No.2007-00096)

8. Prior to the issuance of the first Building Permit, the property owner shall record in the public records of Palm Beach County a Declaration of Restrictive Covenants, in a form acceptable to the Palm Beach County Attorney, which includes but is not limited to the following:

Guarantees the attainability of all required workforce units required per ULDC Article 5.G. and LGA 2017-13, Ordinance 2017-38 condition 4. The site plan shall also be modified to include the OR Book and Page of the recorded document and provide a copy of the revised site plan to Planning.  
(BLDGPM: MONITORING - Planning) [Note: COMPLETED] (Previous PLANNING Condition 8 of Resolution R-2020-339, Control No.2007-00096)

9. On an annual basis, beginning April 1, 2022, or as otherwise stipulated in the Declaration of Restrictive Covenants, the owner of the WHP unit shall submit to the Planning Director, or designee, on a form acceptable to the County, an annual report containing information and documentation to demonstrate continued compliance with the Workforce Housing Program (WHP) and a copy of any monitoring information provided to and received from the appropriate funding agency/source should there be one. (DATE/ONGOING: MONITORING - Planning) (Previous PLANNING Condition 9 of Resolution R-2020-339, Control No.2007-00096)

## **SCHOOL BOARD**

1. The property owner shall post a notice of annual boundary school assignments for students from this development. A sign 11" X 17" shall be posted in a clear and visible location in all sales offices and models with the following:

### **"NOTICE TO PARENTS OF SCHOOL AGE CHILDREN"**

School age children may not necessarily be assigned to the public school closest to their residences. Students in Palm Beach County are assigned annually to schools under the authority of the School Board and, by direction of the Superintendent, public school attendance zones are subject to change. Please contact the Palm Beach County School District Boundary Office at (561) 434-8100 for the most current school assignment(s). (ONGOING: SCHOOL BOARD - School Board) (Previous SCHOOL BOARD Condition 1 of Resolution R-2020-339, Control No.2007-00096)

2. Prior to the issuance of the first Certificate of Occupancy (CO), the 10' by 15' school bus shelter shall be constructed by the Property Owner in a location and manner acceptable to the Palm Beach County School Board. Provisions for the bus shelter shall include, at a minimum, a covered area, continuous paved pedestrian and bicycle access from the subject property or use, to the shelter.

Maintenance of the bus shelter shall be the responsibility of the residential Property Owner. (CO: MONITORING - School Board) [Note: COMPLETED] (Previous SCHOOL BOARD Condition 2 of Resolution R-2020-339, Control No.2007-00096)

**COMPLIANCE**

1. In Granting this Approval, the Board of County Commissioners 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)

2. Failure to comply with any of the Conditions of Approval for the subject property at any time may result in:

- a. The Issuance of a Stop Work Order; the Issuance of a Cease and Desist Order; the Denial or Revocation of a Building Permit; the Denial or Revocation of a Certificate of Occupancy; the Denial of any other Permit, License or Approval to any developer, owner, lessee, or user of the subject property; the Revocation of any other permit, license or approval from any developer, owner, lessee, or user of the subject property; the Revocation of any concurrency; and/or
- b. The Revocation of the Official Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or any other zoning approval; and/or
- c. A requirement of the development to conform with the standards of the Unified Land Development Code at the time of the finding of non-compliance, or the addition or modification of conditions reasonably related to the failure to comply with existing Conditions of Approval; and/or
- d. Referral to Code Enforcement; and/or
- e. Imposition of entitlement density or intensity.

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

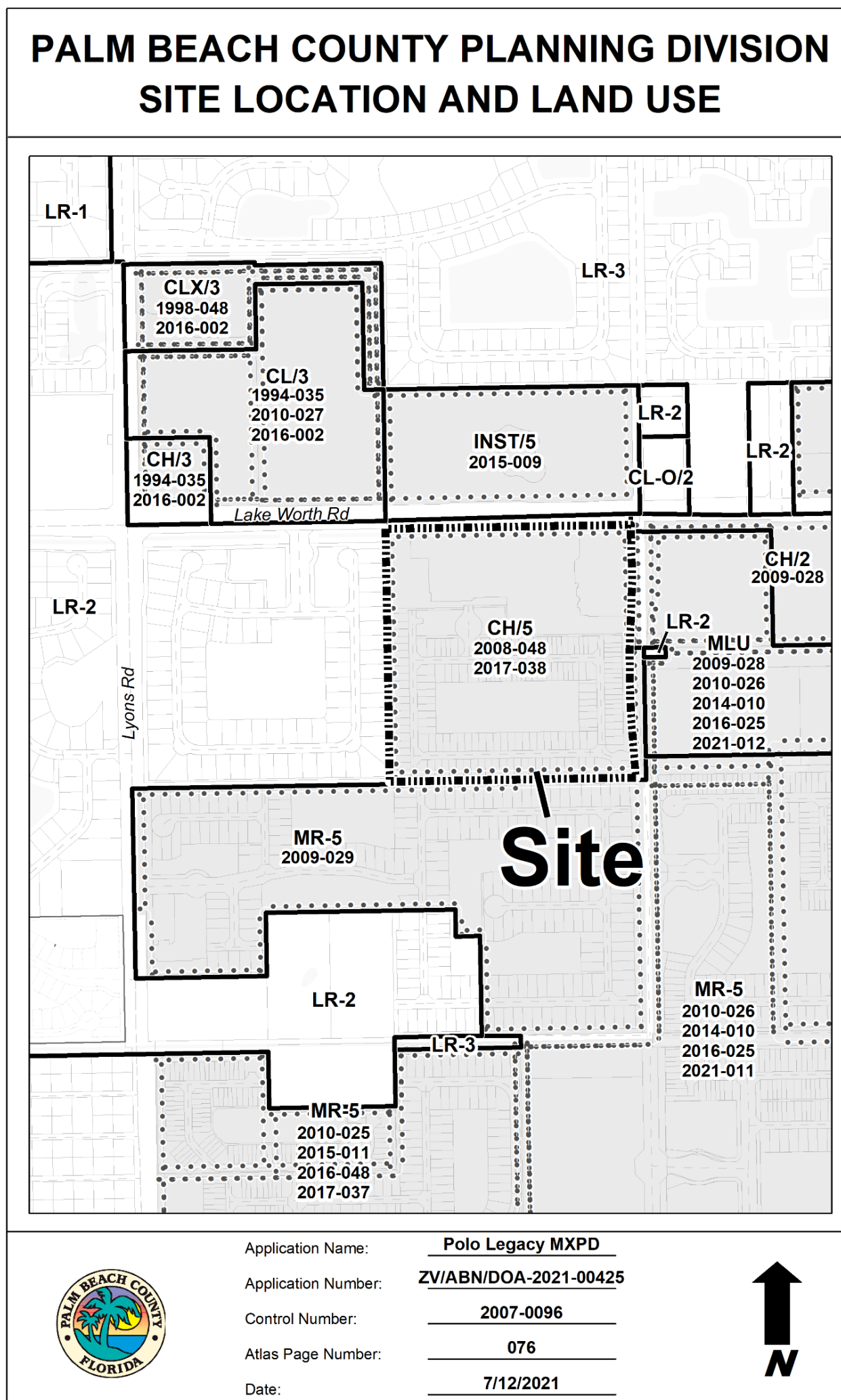
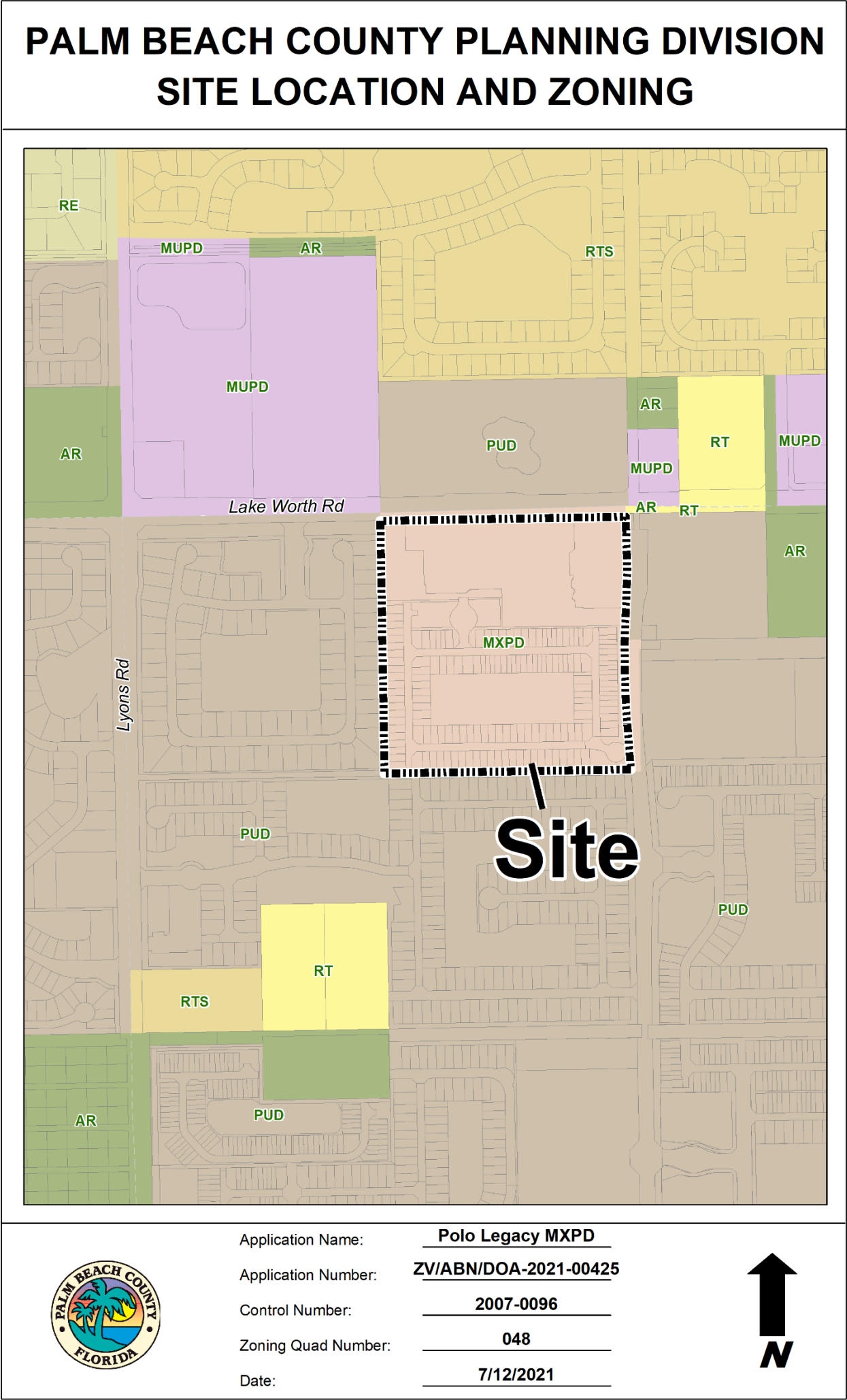


Figure 2 - Zoning Map





Zoning Commission  
Application No. ZV/ABN/DOA-2021-00425  
Polo Legacy MXPD

*Lake Worth Rd*

*Lyons Rd*

**Site**

Palm Beach County



Application Name:	<u>Polo Legacy MXPD</u>
Application Number:	<u>ZVI/ABN/DOA-2021-00425</u>
Control Number:	<u>2007-0096</u>
Atlas Page Number:	<u>076</u>
Date:	<u>7/12/2021</u>





Zoning Commission  
Application No. ZV/ABN/DOA-2021-00425  
Polo Legacy MXP

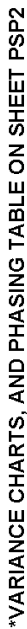
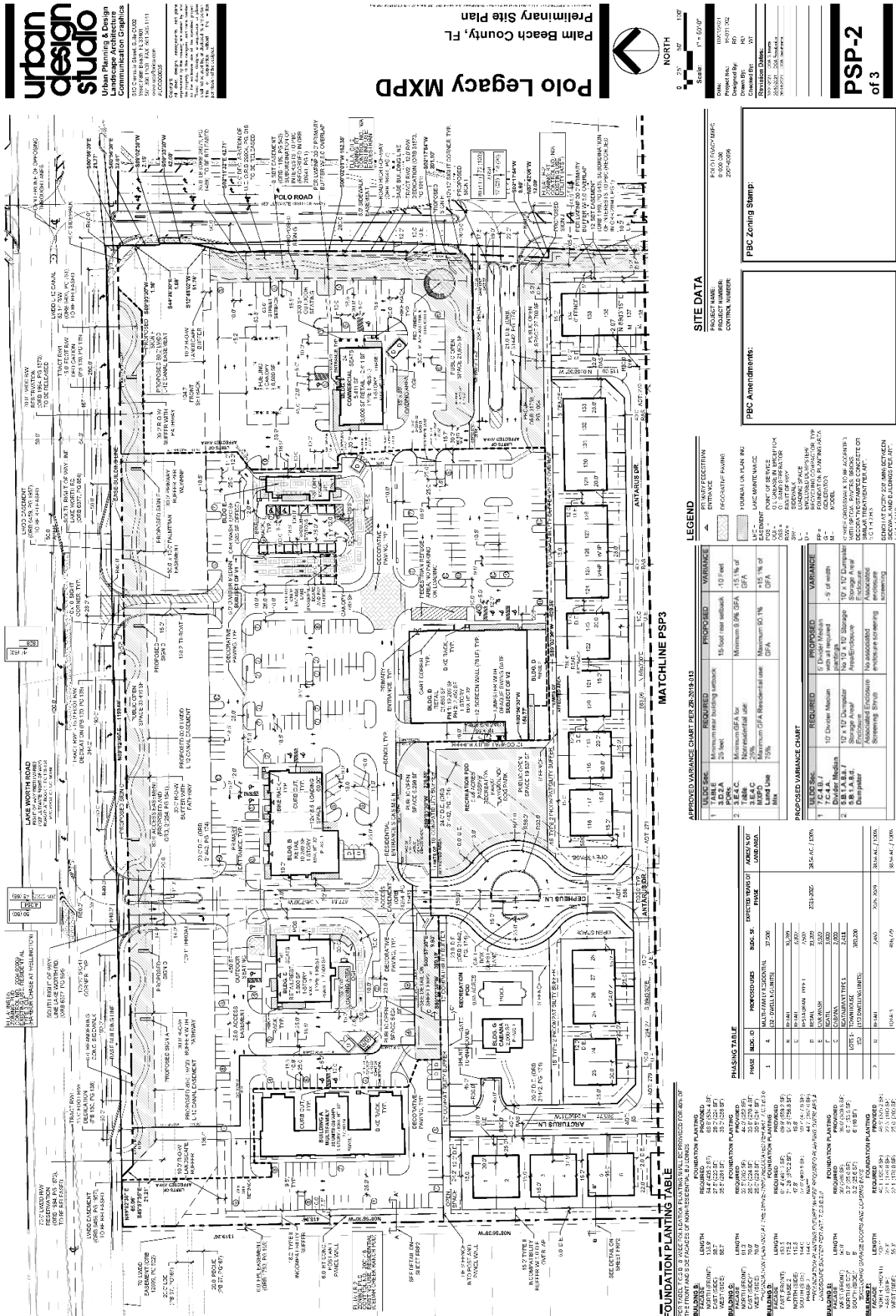




Figure 5 – Preliminary Site Plan (PSP-2 of 3), dated June 14, 2021





Zoning Commission  
Application No. ZV/ABN/DOA-2021-00425  
Polo Legacy MXP

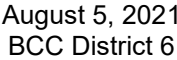
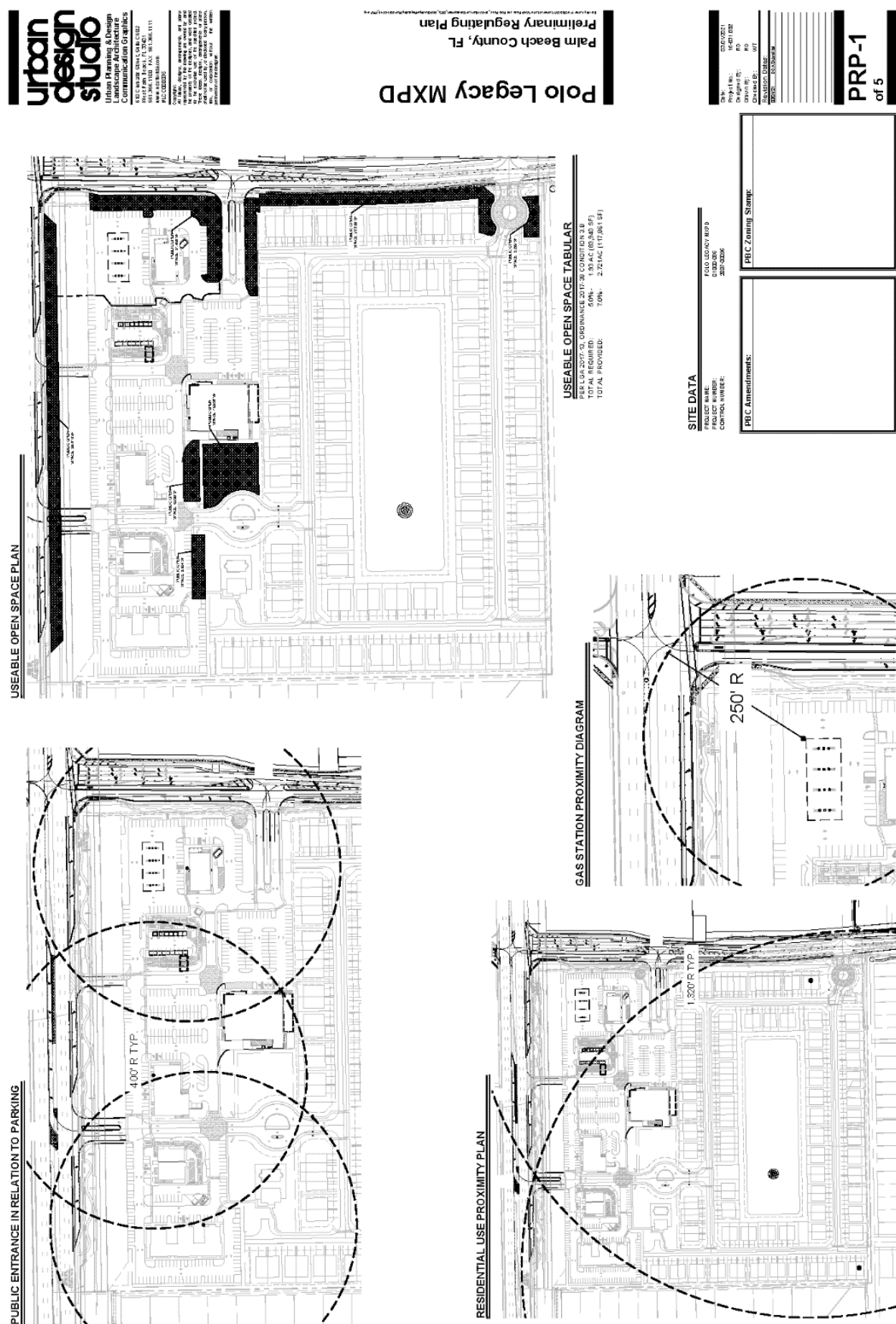


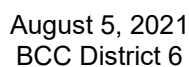
Figure 8 – Preliminary Regulating Plan (PRP-1 of 5), dated March 1, 2021







Zoning Commission  
Application No. ZV/ABN/DOA-2021-00425  
Polo Legacy MXPD





**Figure 12 – Preliminary Regulating Plan (PRP-5 of 5), dated March 1, 2021**

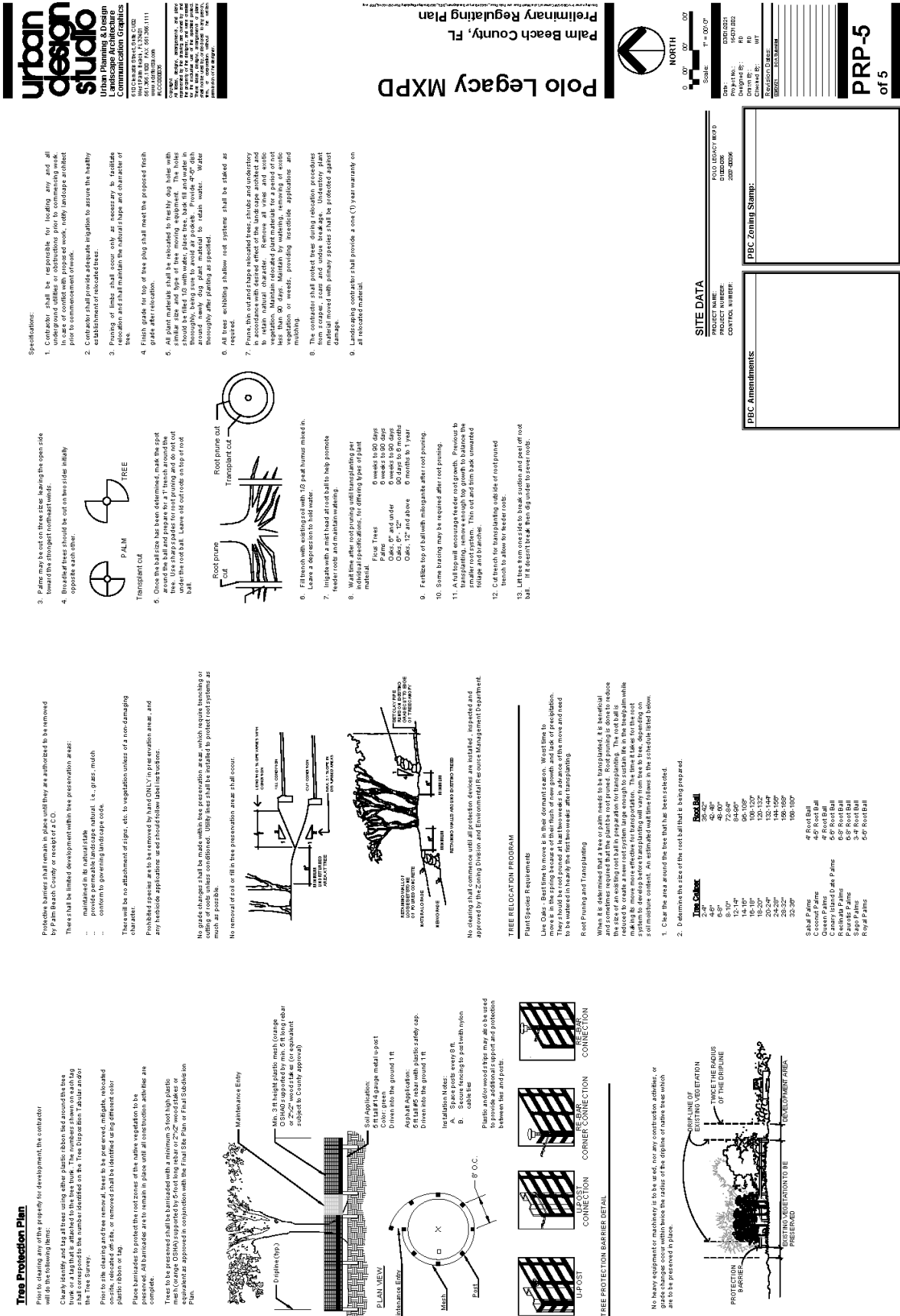






Exhibit D – Disclosure of Ownership

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 Ross Feurring, 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 ☒ Manager Banyan Polo, LLC [position - e.g., president, partner, trustee] of Banyan Polo, LLC [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: 200 Butts Road, Suite 300  
Boca Raton, Florida 33431
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.

  
 \_\_\_\_\_  
 Ross Feuring, 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 19 day of February, 2021 by Ross Feuring (name of person acknowledging). He/she is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification and did/did not take an oath (circle correct response).

Tyler Kopecki  
 (Name - type, stamp or print clearly)

  
 (Signature)

My Commission Expires on: \_\_\_\_\_

NOTARY'S SEAL OR STAMP



TYLER DOUGLAS KOPECKI  
 Commission # GG 198109  
 Expires March 20, 2022  
 Bonded Thru Budget Notary Services

**EXHIBIT "A"**  
**PROPERTY**

See attached

DESCRIPTION: SURVEY OVERALL DESCRIPTION (PARCELS LS-1 THROUGH LS-5)

A PORTION OF PARCEL A, POLO LEGACY MXP, AS RECORDED IN PLAT BOOK 130, PAGES 138 THROUGH 144 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING IN SECTION 29, TOWNSHIP 44 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID PARCEL A; THENCE S.89°03'30"W., ALONG A BOUNDARY LINE OF SAID PARCEL A, A DISTANCE OF 629.56 FEET; THENCE N.00°56'30"W., ALONG A BOUNDARY LINE OF SAID PARCEL A, A DISTANCE OF 200.85 FEET; THENCE S.89°02'28"W., A DISTANCE OF 158.51 FEET TO THE POINT OF CURVATURE HAVING A RADIUS OF 30.00 FEET; THENCE SOUTHWESTERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 67°27'29", A DISTANCE OF 35.32 FEET; THENCE S.89°02'30"W., A DISTANCE OF 208.63 FEET; THENCE N.00°57'30"W., A DISTANCE OF 44.24 FEET TO THE POINT OF CURVE OF A NON TANGENT CURVE TO THE RIGHT, OF WHICH THE RADIUS POINT LIES N.17°00'55"E., A RADIAL DISTANCE OF 15.00 FEET; THENCE NORTHWESTERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 72°02'35", A DISTANCE OF 18.86 FEET; THENCE N.00°56'30"W., A DISTANCE OF 171.03 FEET; THENCE S.89°03'36"W., A DISTANCE OF 91.49 FEET; THENCE N.00°59'36"W., A DISTANCE OF 140.95 FEET TO A POINT OF INTERSECTION WITH A BOUNDARY LINE OF SAID PARCEL A; THENCE N.89°02'30"E., ALONG A BOUNDARY LINE OF SAID PARCEL A, A DISTANCE OF 1,150.86 FEET; THENCE S.00°56'30"E., ALONG A BOUNDARY LINE OF SAID PARCEL A, A DISTANCE OF 21.77 FEET; THENCE S.89°03'30"W., ALONG A BOUNDARY LINE OF SAID PARCEL A, A DISTANCE OF 1.16 FEET; THENCE S.44°26'30"E., ALONG A BOUNDARY LINE OF SAID PARCEL A, A DISTANCE OF 1.68 FEET; THENCE S.00°56'30"E., ALONG A BOUNDARY LINE OF SAID PARCEL A, A DISTANCE OF 32.01 FEET; THENCE N.89°02'30"E., ALONG A BOUNDARY LINE OF SAID PARCEL A, A DISTANCE OF 2.15 FEET; THENCE S.00°33'30"W., ALONG A BOUNDARY LINE OF SAID PARCEL A, A DISTANCE OF 42.00 FEET; THENCE S.12°48'02"W., ALONG A BOUNDARY LINE OF SAID PARCEL A, A DISTANCE OF 51.76 FEET; THENCE S.02°11'32"E., ALONG A BOUNDARY LINE OF SAID PARCEL A, A DISTANCE OF 42.71 FEET; THENCE S.00°02'01"W., ALONG A BOUNDARY LINE OF SAID PARCEL A, A DISTANCE OF 162.35 FEET; THENCE S.02°17'54"W., ALONG A BOUNDARY LINE OF SAID PARCEL A, A DISTANCE OF 201.10 FEET TO THE POINT OF BEGINNING.

CONTAINING 514,580 SQUARE FEET OR 11.8131 ACRES, MORE OR LESS.

## 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

Jason Sher 2200 Bulth Road Ste 300  
Boca Raton FL 33431

Doug Feuring 2200 Bulth Road Ste 300  
Boca Raton FL 33431

Ross Feuring 2200 Bulth Road Ste 300  
Boca Raton FL 33431

DISCLOSURE OF OWNERSHIP INTERESTS – PROPERTY

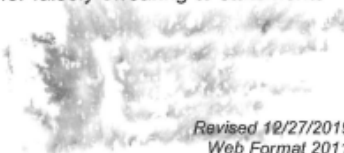
(TO BE COMPLETED AND EXECUTED BY THE PROPERTY OWNER(S) FOR EACH APPLICATION FOR COMPREHENSIVE PLAN AMENDMENT OR DEVELOPMENT ORDER)

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 Anthony J. Palumbo, 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 ☒ Vice President of Mattamy Palm Beach, LLC 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: 4901 Vineland Road, STE 450  
Orlando, Florida 32811
- 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.

Anthony J. Palumbo, 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 29 day of April, 20 21 by Anthony Palumbo (name of person acknowledging). He/she is personally known to me or has produced ID (type of identification) as identification and did/did not take an oath (circle correct response).

Julie Hurst  
(Name - type, stamp or print clearly)

[Signature]  
(Signature)

My Commission Expires on: 1-22-24

NOTARY SEAL OR STAMP





EXHIBIT "A"  
PROPERTY

See attached.

**Exhibit "A"**

**Property**

**PARCEL 1:**

Tract 5, less the North 52.14 feet and the East 40 feet thereof; Tract 6, less the North 52.14 feet thereof; Tract 11; and Tract 12, Block 28, of THE PALM BEACH FARMS CO. PLAT NO. 3, according to the Plat thereof, as recorded in Plat Book 2, Pages 45 through 54, of the Public Records of Palm Beach County, Florida.

**LESS AND EXCEPT:**

A portion of Tracts 5 and 12, Block 28, of THE PALM BEACH FARMS CO. PLAT NO. 3, according to the Plat thereof, as recorded in Plat Book 2, Pages 45 through 54, of the Public Records of Palm Beach County, Florida, being more particularly described as follows:

Beginning at the Southeast corner of said Tract 12; thence S. 89° 03' 30" W. along the South line thereof, a distance of 36.24 feet to the beginning of a non-tangent curve, concave to the West, having a radius of 8,551.00 feet (a radial line from said point bears S. 86° 07' 12" W.); thence Northerly along the arc of said curve, through a central angle of 00° 15' 53", a distance of 39.52 feet; thence N. 04° 40' 47" W., a distance of 182.92 feet to a point of curvature of a curve to the right, having a radius of 3,540.00 feet and a central angle of 03° 56' 05"; thence Northerly along the arc of said curve, a distance of 243.10 feet; thence N. 00° 44' 43" W., a distance of 188.22 feet; thence N. 02° 17' 54" E., a distance of 303.46 feet; thence S. 00° 56' 30" E. along a line 40.00 feet West of (as measured at right angles to) and parallel with the East line of said Tract 5, a distance of 296.11 feet to a point of intersection with the North line of said Tract 12; thence N. 89° 03' 30" E. along said North line, a distance of 40.00 feet to the Northeast corner of said Tract 12; thence S. 00° 56' 30" E. along the East line of said Tract 12, a distance of 660.00 feet to the Point of Beginning.

Lands situate in Section 29, Township 44 South, Range 42 East, Palm Beach County, Florida.

**AND LESS AND EXCEPT:**

A portion of Tract 5, Block 28, of THE PALM BEACH FARMS CO. PLAT NO. 3, according to the Plat thereof, as recorded in Plat Book 2, Pages 45 through 54, of the Public Records of Palm Beach County, Florida, being more particularly described as follows:

Commencing at the Northeast corner of said Tract 5; thence S. 00° 56' 30" E. along the East line of said Tract 5, a distance of 52.14 feet; thence S. 89° 02' 30" W. along the South right-of-way line of the Lake Worth Drainage District L-12 canal, as recorded in Official Records Book 6495, Page 761, of said Public Records, a distance of 40.00 feet to the Point of Beginning; thence S. 00° 56' 30" E., a distance of 1.22 feet; thence N. 44° 26' 30" W., a distance of 1.68 feet to a point of intersection with the South right-of-way line of said Lake Worth Drainage District L-12 canal; thence N. 89° 03' 30" E. along said right-of-way line, a distance of 1.16 feet to the Point of Beginning.

Lands situate in Section 29, Township 44 South, Range 42 East, Palm Beach County, Florida.

WPBDOCS 9570127 4

**PARCEL 2:**

A portion of Tract 5, Block 28, of THE PALM BEACH FARMS CO. PLAT NO. 3, according to the Plat thereof, as recorded in Plat Book 2, Pages 45 through 54, of the Public Records of Palm Beach County, Florida, being more particularly described as follows:

Commencing at the Northeast corner of said Tract 5; thence S. 00° 56' 30" E. along the East line of said Tract 5, a distance of 85.36 feet; thence S. 89° 02' 30" W. along the South line of that certain Lake Worth Drainage District easement recorded in Official Records Book 6459, Page 1957, of said Public Records, a distance of 37.85 feet to the Point of Beginning; thence continue S. 89° 02' 30" W. along said South line, a distance of 2.15 feet; thence S. 00° 56' 30" E., along a line 40.00 feet West of (as measured at right angles to) and parallel with the East line of said Tract 5, a distance of 278.52 feet; thence N. 02° 17' 54" E., a distance of 28.12 feet; thence N. 00° 33' 30" E., a distance of 54.52 feet; thence N. 02° 11' 32" W., a distance of 125.03 feet; thence N. 00° 33' 30" E., a distance of 70.97 feet to the Point of Beginning.

Lands situate in Section 29, Township 44 South, Range 42 East, Palm Beach County, Florida.

**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
	Mattamy Palm Beach LLC, 4901 Vineland Road, Suite 450, Orlando, FL 32811

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

STATE OF FLORIDA  
COUNTY OF PALM BEACH

1. Affiant is the [ ] individual or [x] Vice President \_\_\_\_\_ [position - e.g., president, partner, trustee] of LWPR, LLC \_\_\_\_\_ [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.

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.

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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.

Matthew F. Yon  
Matthew Yon, 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 12<sup>th</sup> day of APRIL, 2021 by MATTHEW F. YON (name of person acknowledging). He/she is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification and did/did not take an oath (circle correct response).

Brittany C. Evans  
(Name - type, stamp or print clearly)

Brittany C. Evans  
(Signature)

My Commission Expires on: 2/3/24

NOTARY'S SEAL OR STAMP



**EXHIBIT "A"**

**PROPERTY**

See attached

DESCRIPTION: SURVEY OVERALL DESCRIPTION (PARCELS LS-1 THROUGH LS-5)

A PORTION OF PARCEL A, POLO LEGACY MXP, AS RECORDED IN PLAT BOOK 130, PAGES 138 THROUGH 144 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING IN SECTION 29, TOWNSHIP 44 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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CONTAINING 514,580 SQUARE FEET OR 11.8131 ACRES, MORE OR LESS.



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Name	Address
Ross Feurring	2200 Butts Road suite 300 Boca Raton FI 33431
Jason Sher	2200 Butts Road suite 300 Boca Raton FI 33431
Douglas Feurring	2200 Butts Road suite 300 Boca Raton FI 33431

JUSTIFICATION STATEMENT

POLO LEGACY MXPDP  
Concurrent Type 2 Variance  
Control Number: 2007-00096  
Application Number: ZV/ABN/DOA-2021-00425  
June 14, 2021



Request

On behalf of the property owner and applicant, Banyan Polo LLC, Urban Design Studio has prepared and hereby respectfully submits this application request for approval of two (2) Concurrent Type 2 Variances for the proposed Polo Legacy Mixed Use Planned Development (MXPDP). This request is concurrent with the submitted requests for Development Order Amendment and Development Order Abandonment, currently under review and included in the above application number referenced. The applicant is requesting variances to allow for a reduction in the required width of a divider median and elimination of enclosure and screening requirements for a proposed dumpster located within a service/loading area enclosure.

Overview/Variance History

The Polo Legacy MXPDP is a 38.54-acre site approved for both residential and non-residential uses. The MXPDP has been previously approved for 184 units and 51,000 SF of proposed non-residential uses. As a part of the concurrent requests noted, the applicant is requesting to modify the MXPDP to reduce the non-residential square footage from 51,000 to 48,849; reconfigure portions of the commercial site to accommodate leased and potential tenants, new uses; and the abandonment of a Class A Conditional Use (Building E). There are no changes to the residential approvals as a result of that request.

As part of the ongoing development within the platted MXPDP, the southern residential portion of the development is currently under construction, while the commercial and multifamily portions of the site remain undeveloped, however Building C is currently under permit review, and the development as a whole has received all but the vertical building permits. The commercial portion of the development was recently purchased by the applicant, along with the purchase of the fuel station site at the northeast corner of the site by LWPR, LLC.

In April of 2019, the owner and applicant at that time, Mattamy Palm Beach, LLC, requested and was granted approval by the Zoning Commission for two (2) Type 2 Variances for the MXPDP site. Those Variances were granted via ZR-2019-013 (see below chart for details).

West Palm Beach Office: 610 Clematis Street, Suite CU-02, West Palm Beach, FL 33401 P: 561-366-1100  
Boynton Beach Office: 508 E. Boynton Beach Blvd., Boynton Beach, FL 33435 P: 561-736-8838  
www.udsfllorida.com LA0001739

**Type 2 Variances Approved**

	ULDC Sec.	REQUIRED	PROPOSED	VARIANCE
1	<b>TABLE 3.D.2.A PDRs</b>	Minimum rear building setback: 25 feet	15-foot rear setback	-10 Feet
2.	<b>3.E.4.C. Table 3.E.4.C MXPD Land Use Mix</b>	Minimum GFA for Nonresidential use: 25%	Minimum 9.9% GFA	-15.1% of GFA
		Maximum GFA Residential use: 75%	Maximum 90.1% GFA	+15.1% of GFA

With this request, the applicant is requesting the following variances:

**Type 2 Variances Requested**

	ULDC Sec.	REQUIRED	PROPOSED	VARIANCE
1	<b>7.C.4.B. / 7.C.4.A. Divider Median</b>	10' Divider Median	5' Divider Median with all required plantings	- 5' of width
2.	<b>5.B.1.A.8.a. / 5.B.1.A.8.d. Dumpster</b>	10' x 10' Dumpster Storage Area/ Enclosure	No 10' x 10' Storage Area/Enclosure	10' x 10' Dumpster Storage Area/ Enclosure
		Associated Enclosure Screening: Shrub	No associated enclosure screening	Associated enclosure screening

**Variance Justifications:**

As a result of multiple discussions with PBC Zoning Staff via emails and phone conversations, the applicant is amending the current request to include two (2) proposed Concurrent Type 2 Variances for minor deviations to the Unified Land Development Code (ULDC), as discovered as part of the final site designing of individual tenant spaces. The first Variance being requested is to allow for a 5' reduction of a divider median located within the confined site of a proposed state of the art automated car wash facility. The second is to allow for a proposed dumpster container to be permitted without separate enclosure and vegetation screening requirements, within the proposed service/loading area enclosure at the rear of the proposed grocery use (Building D). Approval of these variances would not set a precedence by PBC as approvals for similar variances (Soapy Shark – Control 1996-00026) and/or site design (Dazco Center – Control 2003-00040) have been previously granted to other sites by PBC.

Project No. #16-031.003  
Control No. 2007-00096

Polo Legacy MXP  
Type 2 Variance Request

June 14, 2021  
Page 2 of 10

Variance 1 (10' Divider Median Reduction):

With regards to Variance 1, Article 7.C.4.B requires a 10' divider median between all parking and vehicular use areas in order to channel traffic circulation efficiently and safely. The divider median that is subject to the 5' reduction request is located between the proposed car wash vacuum parking and the adjacent vehicular use area of the queuing lanes that lead into the car wash tunnel. In that the site was previously approved for a Type 1 Restaurant with drive through (subject to the concurrent abandonment request) the site area has been previously designed as part of and central to the overall commercial development. The site is additionally located between an approved secondary driveway providing vehicular and pedestrian access to Lake Worth Road and the previously platted fuel station site, further limiting the redesign of the site for the proposed car wash use.

With this request, the proposed design of the car wash use provides for a 5' median separating the queuing/member/bypass lanes or vehicular use area and the vacuum parking spaces. The vacuum parking spaces are conveniently placed so that vehicles exiting the car wash tunnel building may enter this area and continue to use the facilities provided to complete the detailing of the interior and exterior of their vehicles. The finishing times vary from 15 minutes to 30+ minutes, as needed by the patron. The vacuum parking spaces are designed for these prolonged times by providing larger shaded spaces to allow patrons to fully open their doors and clean/detail at their discretion. The placement of the 5' divider median between the lower speed queuing lanes and vacuum parking spaces is the minimum width required to provide for safe onsite operations and operational traffic flow within the car wash site. Applicant is additionally proposing to provide for the required planting within the reduced divider median area with the installation of palms, thereby minimizing the variance request. The site is meeting all other ULDC design requirements and the reduction to the divider width is not inconsistent with the intent of creating a safe and efficient traffic circulation pattern on site.

Variance 2 (Dumpster Enclosure and Screening):

As it relates to Variance 2, the applicant is requesting to eliminate the requirements for a 10'x10' dumpster storage area/enclosure and associated screen plantings for a single dumpster that will be located within the service/loading area enclosure already proposed at the rear of the proposed grocery use (Building D).

The Tenant for the site (Aldi) institutes an operational program that consolidates multiple functions into one area, considered a service/loading area. These areas are typically located at the rear of the building, as is this case. The proposed location within the Polo Legacy MXPDP will be screened in its entirety from the east and south by the building itself and from the west by a required 12' screen wall for the proposed service/loading enclosure along with previously approved 10' compatibility buffer. Aldi has a minimum waste program that includes the freezing of foods that are set to expire in order to provide those items to local food banks and the like. All recycling operations are provided interior to the building and brought out to the collection agency at their scheduled times. With this program proven to be successful, there is minimal waste generated by the grocer, who as a result requires one (1) 7-yard dumpster be provided on site. Neither the loading nor dumpster shown on the plans are visible to the residential components or the ROW.

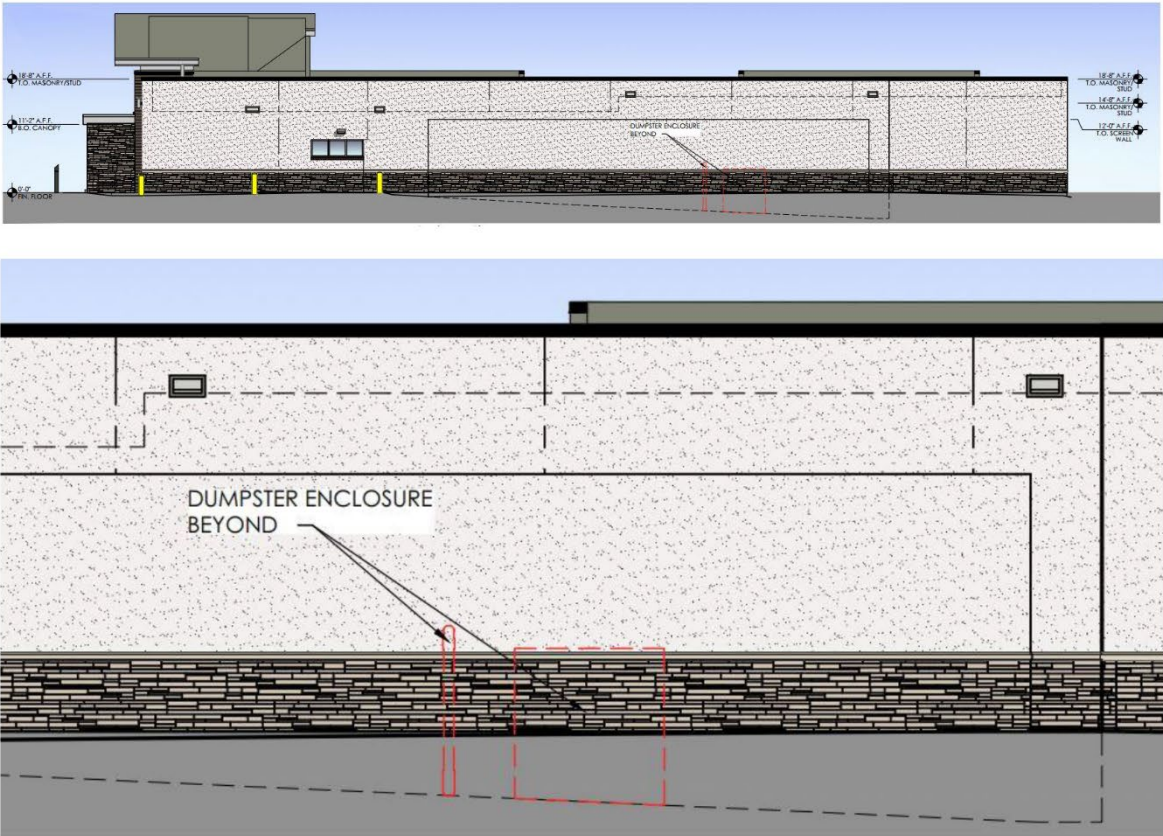
Project No. #16-031.003  
Control No. 2007-00096

Polo Legacy MXPDP  
Type 2 Variance Request

June 14, 2021  
Page 3 of 10

The proposed service/loading area has an approximate - 4' slope from the surface grade of the commercial development. With this amount of negative slope, the proposed location of the dumpster will not be at grade and only partially visible. And with the added screening measures of the opaque panel, as detailed below, there is no anticipated visibility of the dumpster at this location. The graphics below show the proposed condition.

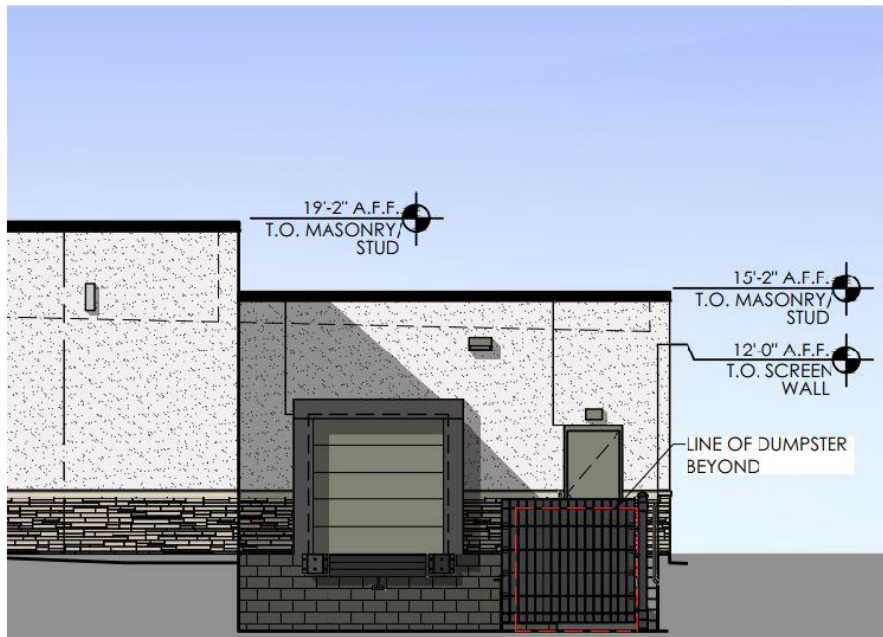
WEST ELEVATION



*Note: the dumpster and single panel screen gate (shown in red) are located at the rear of the service/loading dock area, further decreasing any perceived negative impacts.*

NORTH ELEVATION





*Note: view indicates the noted change in depth between the grade of the commercial center and the service/loading dock area, with dumpster indicated in red behind the single panel screen gate.*

As shown below, the Tenant proposes the dumpster to be positioned at the interior section of the loading well area, adjacent the rear stairwell leading to the top of the loading dock. The Tenant further proposes to provide for an opaque single panel swinging gate that will be consistent with the architecture of the building, meeting with the intent of the ULDC to provide visual screening of the dumpster from the opening of the service/loading area enclosure, similar to other approved locations.



Project No. #16-031.003  
Control No. 2007-00096

Polo Legacy MXP  
Type 2 Variance Request

June 14, 2021  
Page 5 of 10



Additionally, the Tenant has concerns related to the ULDC requirements for a dumpster enclosure within the proposed service/loading area enclosure as it relates to rodents, smells, and other unsightly and unwanted issues that are typically experienced with an enclosure. As the use is in close proximity to the neighboring residential use and recreation area, the proposed design provides for a cleaner alternative and continues to meet the intent of the ULDC for screening.

Palm Beach County has previously approved a comparable design for this Tenant in 2015 as part of the DAZCO Center located on Hypoluxo Road (Control 2003-040). That approval did not require the applicant request a Type 2 Variance nor were related conditions of approval placed on the project. Tenant is hopeful that the Zoning Commission will find that this proposed design meets the intent of the ULDC and provides a better solution for this use in particular.

In accordance with Article 2.B.7.E.6, the ZC shall consider and find that all seven criteria listed below have been satisfied by the applicant prior to making a motion for approval, of a zoning or subdivision variance:

**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**

Variance 1 (Bldg. E - Divider Median):

The development plan for Polo Legacy MXPB is unique in that it provides for a compact urban design concept that is not utilized in the typical suburban development design. This causes the typical user within the development to meet challenges of design created by site constraints associated with other approved site improvements outside the affected area. For this Variance request, special circumstances exist as the access to the site is limited by internal driveways that have been previously established based on the approved access points to the FDOT controlled Lake Worth Road and PBC controlled Polo Road. The site is additionally constrained by the surrounding proposed development within the commercial pod, which may or may not have been platted within the commercial development that further restrict the design of the site. This compounded with the challenges presented with complying with the design requirements of the ULDC for a car wash, the applicant has presented a design for the site that requires the minimum need for deviation internal to the functions of the site based on these special conditions.

Variance 2 (Bldg. D – Dumpster Enclosure):

The Building D site is restricted to the placement of the building at the proposed location due to the adjacent platted residential/recreational use and established/approved access points and connecting internal drives and approved parking fields. Due to the function of the use as a grocery and the Tenant's desire to have the least amount of impact on the neighboring community, the Tenant has designed the site with the service/loading area to be screened on three sides. As a result of providing for the best design, space within the service/loading area is limited and does not lend itself to the addition of a 10'x10' enclosure with surrounding 2' hedge. Alternatively, placing a ULDC compliant dumpster enclosure

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with planting outside the proposed service/loading area, and within the commercial center, does not lend itself to the successful function of the use.

Additionally, a special circumstance exists as the proposed service and loading area must also be screened per the ULDC requirements, which exceeds the screening requirements for a dumpster enclosure. For this particular site, there is a 76' long 12' screen wall proposed on the west and the proposed building screens the east and south sides of the area. Visibility of the area is only provided at the opening to the area and the proposed opaque single swing gate meets the intent of the ULDC to screen the dumpster. Further, PBC has previously approved administrative Type 1 Variances for the elimination of required plantings associated with dumpsters for industrial projects (Park of Commerce) as providing for the necessary irrigation within similar loading areas becomes a functional issue and the use of the service/loading area creates an unsustainable environment for the planting materials themselves.

**2. Special circumstances and conditions do not result from the actions of the applicant;**

Variance 1 (Bldg. E - Divider Median):

The special circumstances here is a result of a land development code that does not take into consideration of current trends of the more compact car wash industry which uses creativity in the design and operational function of a site to provide for the most efficient use of the land. The ULDC requirement for a 10' divider median between internal functions within the car wash site is an excessive restriction that, in this case, if complied with, would require the user to reduce the number of queuing lanes, which from an operational standpoint could cause vehicle to stack outside of the site and on the adjacent drive isles within the commercial development.

Variance 2 (Bldg. D – Dumpster Enclosure):

Here again, the special circumstance is a result of a land development code that does not take into consideration the use of a service/loading area by a larger single user tenant, but instead would require that a smaller enclosure with landscape screening be constructed within a larger enclosure, which also is required landscape screening. Numerous other municipalities within, and including PBC, have allowed for flexibility in the property development regulations for this same design and use of the multifunctional service/loading area, which with the proposed screening as described, meets the intent of the ULDC.

**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;**

Variance 1 (Bldg. E - Divider Median):

PBC Zoning Commission has more recently granted similar variances for similar conditions on automated car wash sites with limited and constrained site areas. The granting of this variance would therefore not confer any special privilege.

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Variance 2 (Bldg. D – Dumpster Enclosure):

Approval of this variance request would not confer any special privilege to the applicant as this is a matter of the ULDC not identifying regulations for special conditions such as this where a service/loading area is providing for the required screening on three sides, all but negating the need for the dumpster requirements of the ULDC. Approval of this variance to allow the applicant to locate a single dumpster within the suppressed service/loading area enclosure, with opaque single panel swinging gate that is consistent with the building architecture, could be granted to any user with the same design condition.

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

Variance 1 (Bldg. E - Divider Median):

In this particular case, and with the restrictions of the site based on prior approvals and designs, the literal interpretation by PBC for the requirement of a 10' divider median between an area used by patrons to detail a parked vehicle and an adjacent low-speed queuing lane is excessive in design and would require the user to design the site with potential implications of overflow into the adjacent drive isles creating an unnecessary and undue hardship for the function of the commercial center as a whole. Applicant believes that the intent of the ULDC is being met with the proposed design as it continues to provide for a safe and efficient use of the affected area.

Variance 2 (Bldg. D – Dumpster Enclosure):

The literal interpretation and enforcement of the ULDC in this situation would require the tenant to design an enclosure within an enclosure and provide shrub plantings to screen same in a use area reducing the viability of any plantings. Applicant has a model for a successful service/loading area operation that includes adequate screening of the necessary 7-yard dumpster, which is located 4' below grade as it relates to the surrounding commercial area. Applicant believes that the intent of the ULDC is being met with the proposed screening of the service/loading area and proposed dumpster location on three sides and is providing for a single opaque 'architecturally consistent' panel gate.

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

Variance 1 (Bldg. E - Divider Median):

The granting of the requested variance to allow for a 5' reduction of an internally functioning divider median for this site is the minimum variance needed to make reasonable use of the site area due to the design constraints created by other approved site improvements, where construction has been completed, under permit review, and or have been platted.

Variance 2 (MXPD Land Use Mix):

The granting of the requested variance to eliminate a redundant dumpster enclosure and screening within a larger service/loading area enclosure, which provides for more than the required screening of the dumpster, is the minimum request that can be made.

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

Variance 1 (Bldg. E - Divider Median):

Pursuant to ULDC Articles 7.C.4.B. and 7.C.4.A, it is interpreted that the purpose for the 10' divider median in vehicular use areas is to channel traffic circulation effectively and safely. For the purposes of parking areas with drive isles and adjacent intersecting driveways, providing cues to the driver on how to traverse these areas is important to maintain that efficient and safe use. And for that purpose, the need for the 10' divider medians are apparent as they provide for those cues by providing for separations in the vehicular landscape. However, for the purpose of the design and function of a car wash site, there is not the same need for a 10' divider median. Providing a 10' separation between the car wash queuing lane (where the patron's vehicle is mostly stationary) and adjacent car wash vacuum parking space (use specific to the same patron to detail their parked vehicle), is excessive and non-functional as it relates to the safe and efficient use of the areas. And although the commercial development provides for these required 10' divider medians throughout the site, it is not believed it is the intent of the ULDC to require these excessive separations for internal functions to a singular use, such as the proposed car wash. User and applicant believe that the request to reduce to the subject median width to 5' provides for more than adequate separation.

Variance 2 (MXPD Land Use Mix):

Pursuant to Article 5.B.1.A.8.a. and 5.B.1.A.8.d., the intent of the requirement for enclosures is to protect the surrounding environment from the negative visual aspects that accompany non-residential garbage and recycling containment and to provide areas that are more visually pleasing and manageable. The proposed containment and screening provide for the intent of the ULDC in that the dumpster will be in an enclosure area on three sides, screened from adjacent uses with vegetation on that side of the enclosure that is not building, and will have an opaque swing panel/gate that is architecturally consistent with the building and that provides screening from the open end of the enclosure. This proposed treatment is consistent with the intent of the ULDC.

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

Variance 1 (Bldg. E - Divider Median):

The granting of the requested variance does not cause injury to the area nor is it detrimental to the public welfare. This is a request to reduce a divider median internal to a specific use where vehicular traffic is controlled.

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Variance 2 (MXPD Land Use Mix):

The granting of the requested variance does not cause injury to the area nor is it detrimental to the public welfare. This is a request to allow for the proposed larger service/loading area enclosure and vegetation screening to provide for the intent, and in lieu of, the addition of a second required 10' x 10' dumpster enclosure with vegetation screening.

**Conclusion**

On behalf of the applicant and property owners, UDS respectfully requests favorable review and consideration of this application for the approval of these Concurrent Type 2 Variances for the Polo Legacy MXPD. Project Managers at Urban Design Kilday Studios are Ken Tuma and Sandra Megrue who can be reached at (561) 366-1100 or via email at [ktuma@udsflorida.com](mailto:ktuma@udsflorida.com) and [smegrue@udsflorida.com](mailto:smegrue@udsflorida.com). Please contact the agent with any questions or for additional information in support of the requested applications.

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