

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

ZONING COMMISSION STANDALONE VARIANCE STAFF REPORT

Application No.: ZV-2021-00831
Application Name: 7-Eleven at Boynton West Shopping Center
Control No./Name: 1972-00051
Applicant(s): KIR Boynton LP
Owner(s): KIR Boynton
Agent(s): Gunster, Yoakley & Stewart, PA
 Brian Seymour & Josh Long
Telephone No.: (561) 650-0621, (561) 650-0719
Project Manager: Timothy Haynes, Senior Site Planner

TITLE: a Type 2 Variance **REQUEST:** to allow a 100% utility easement overlap of a Right-of-Way (ROW) buffer.

APPLICATION SUMMARY: The application is requesting a Type 2 Variance for the 7-Eleven at Boynton West Shopping Center development. The site is within a 17.84-acre Commercial Pod of an existing Planned Unit Development (PUD). The Pod currently supports a shopping plaza which includes 193,929 square feet (sq. ft.) of mixed commercial uses including General Retail, a Type 2 Restaurant, a Financial Institution, and Retail Gas and Fuel Sales.

The application is requesting a Type 2 Variance to allow the required ROW buffer along Military Trail to overlap a Utility Easement by 10 feet (100 percent overlap) for a distance of approximately 330 ft. The affected area, which is located at the southwest corner of Military Trail and Classico Place, was previously approved for Class A Conditional Use for Retail Gas and Fuel Sales with a 3000 square foot (sq. ft.) Convenience Store, as well as a Type 2 Variance to reduce the ROW buffer along Military Trail for the affected area from 20 ft. to 10 ft. The Gas Station and Convenience store has not been constructed to date. No modifications to the existing site layout are proposed as part of this request.

SITE DATA:

Location:	Southwest corner of Military Trail and Classico Place.
Property Control Number(s):	00-42-45-23-05-000-0050 & 00-42-45-23-05-000-0060
Existing Land Use Designation:	Commercial High, with an underlying HR-8 (CH/8)
Proposed Land Use Designation:	No change
Existing Zoning District:	Planned Unit Development (PUD) District (Commercial Pod)
Proposed Zoning District:	Planned Unit Development (PUD) District (Commercial Pod)
Acreage:	17.84 acres (Overall) 1.24 acres (Affected Area)
Tier:	Urban/Suburban
Overlay District:	None
Neighborhood Plan:	West Boynton Area Community Plan
CCRT Area:	None
Municipalities within 1 Mile:	Boynton Beach
Future Annexation Area:	Boynton Beach

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

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

PROJECT HISTORY:

Application No.	Request	Resolution	Approval Date
SE-1972-00051 (D)	A Special Exception to amend the Master Plan for Country Club Trails PUD to change the unit type in Village II. (Applies to Residential Pod (Village II))	R-1972-0051	03/16/1972
SE-1972-00051(A)	A Special Exception to amend the Master Plan for Country Club Trails Planned Unit Development (Applied to the Overall Development)	R-1983-1057	09/23/1982
SE-1972-00051 (B)	A Special Exception to amend the Master Plan for Country Club Trails Planned Unit Development to change the housing category on the eastern portion of bent trees from Category B to Category C. (Applied to Residential Pod – Bent Tree, Tracts R-2 and B)	R-1989-0447	02/24/1983
DOA-1972-00051 (C)	A Development Order Amendment for a modification of Commission requirements (Applied to Residential Pod – Bent Tree-1E through 14E, Tracts R-2 and B)	R-1989-1231	04/27/1988
SE-1972-00051 (D)	A Special Exception to amend the Master Plan for Country Club Trails PUD to change the unit type in Village II. (Applies to Residential Pod (Village II))	R-1991-1174	6/27/1991
ZV/ABN/DOA/R-2016-01229	To allow a Type II Variance to allow a reduction in the number and dimensions	ZR-2017-030	07/06/2017
	Type II Variance to allow a reduction in the Right of Way Buffer width; reduce the divider median width; and, eliminate the trees within a divider median.	ZR-2017-029	07/06/2017
	Requested Use to allow Retail Gas and Fuel.	R-2017-1412	09/28/2017
	Development Order Amendment to reconfigure the Site Plan; delete square footage; modify uses; and, add parking spaces.	R-2017-1411	09/28/2017
	Abandonment of R-1983-130, approving SE-1982-00109, for an exception to allow an Auto Service Station.	R-2017-1410	09/28/2017

SURROUNDING LAND USES:

NORTH:

FLU Designation: High Residential (HR-8)
 Zoning District: Agricultural Residential/Special Exception (AR/SE)
 Supporting: Residential (Country Club Trails PUD, Control No. 1972-00051)

SOUTH (across Boynton Beach Boulevard):

FLU Designation: High Residential (HR-8)
 Zoning District: Agricultural Residential/Special Exception (AR/SE)
 Supporting: Residential (Country Club Trails PUD, Control No. 1972-00051)

EAST (across Military Trail):

FLU Designation: Commercial High, with an underlying HR-8 (CH/8)

Zoning District: Multiple Use Planned Development (MUPD)
 Supporting: Commercial (Boynton Trail Centre, Control No. 1981-00152)

WEST:

FLU Designation: High Residential (HR-8)
 Zoning District: Agricultural Residential/Special Exception (AR/SE)
 Supporting: Residential (Country Club Trails PUD, Control No. 1972-00051)

TYPE 2 VARIANCE SUMMARY:

ULDC Article	Required	Proposed	Variance
Art. 7.C.5.A. Overlap in R-O-W Buffer	Maximum 5 ft. overlap permitted for a Utility Easement (UE)	10 ft. UE overlap in R-O-W Buffer	+5 ft. (100% overlap)

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:***

YES: There are special circumstances that exist which are peculiar to this development and are not applicable to other developments within the same Zoning District. The subject site had an existing 20 ft. Utility Easement (U.E.) that spanned 330 linear feet along Military Trail fronting the affected area (see Figure 5). With the dedication of lands for a deceleration lane that is required for the site, the existing FPL easement (overhead utilities) was to be shifted west into the site with a maximum 5 ft. overlap, as part of the last approval and variances previously approved. Following the approval of the Variances and DOA of Application ZV/ABN/DOA/R-2016-01229, the Applicant met with FPL and they weren't able to shift the easement west as far as they needed to maintain five foot clear of the easement overlap.

With the shifting of the utility poles inside the base building line, the required 10 ft. R-O-W buffer reduced from 20 ft. to 10 ft. through Variance Application ZV-2017-0029. Additionally, the Applicant was unable to shift development further into the site to accommodate the maximum 5 ft. overlap requirements as the outparcel provides for only 110 ft. in width. While there will be 100 percent overlap, the Applicant will still be subject to the Right-Tree, Right-Place planting requirements as outlined in Art. 7, Landscaping, requirements for a R-O-W buffer along Military Trail. The Preliminary Regulating Plan must be modified to provide planting material that will conform height restrictions of the Code near the utility poles and power lines. As such, Staff has recommended a Condition of Approval for this requirement.

The conditions provide a peculiar circumstance that inhibit the site design to meet Art.7.5.C.A Overlap in a R-O-W and Incompatibility Buffer, requirements.

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

YES: When the subject outparcel was approved in 2017 for the Gas Station and Convenience Store, the Applicant at that time was approved for a reduced R-O-W buffer, as an oversized 20 ft. UE was required for overhead lines by Florida Power and Light. Generally, utility easements along a base building line is 10 ft. In this specific case, the Applicant was required to relocate the UE with land dedications required, and to maintain the 20 ft. UE. If the Applicant was required to shift the buffer to only overlap a maximum of 5 ft., drive aisles wouldn't begin until 20 ft. from the base building line. As previously stated, with lot width constraints for the subject outparcel, the site would not be able to be developed as previously approved. With the need for the UE and existing lot constraints, special conditions on-site do not result from the actions of the Applicant.

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

YES: Granting this variance will not confer a special privilege not allowed by the code and not available to other parcels of land and, structures or buildings within the same zoning district, including other developments within the Commercial Pod. The Code allows for reasonable variances to be applied to sites with peculiar conditions. The lot configuration and the required 20 ft. U.E. necessitate a variance to comply with provisions of the Code.

- 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:***

YES: The literal interpretation of the Code would create an unnecessary and undue hardship on the Applicant. Allowance of the easement will have will still require all plantings to meet Art. 7 requirements. Granting of the variance allows for the buffer adjacent to R-O-W to be installed without redesigning of overall site. Literal interpretation and enforcement of the Code would require major site modifications and would work an unnecessary and undue hardship.

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

YES: The Applicant is seeking the minimum variance to allow the easement overlap on the site. Granting of the variance is the minimum variance necessary to make reasonable use of the parcel of land. To ensure no other modifications to the planting material are made without the appropriate application process per Code, Staff has recommended two Conditions of Approval regarding the height of the trees near adjacent over-head utilities and removal and replacement of vegetation on site cannot be conducted without Zoning approval.

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

YES: Granting of the variance will still allow the site to be consistent with the purposes, goals, objectives and policies of the Code and Plan. The subject site which serves as an out parcel of a Commercial Pod of a PUD will still serve its primary function of an approved Retail Gas and Fuel Sales use. Granting of the variance will not create violations in other requirements of the Code. The planting material will be required to meet the height and quantity pursuant to Article 7 Landscaping standards. Any deviations will result in a nonconformity, necessitating compliance or variance approval. As such, the Applicant is seeking to bring the site into Code compliance with the request.

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

YES: The granting of the variance will have no impacts on the adjacent properties and only seeks to permit the easement overlap on the subject site. A Condition of Approval has been recommended that the Preliminary Regulating Plan be revised to reflect the appropriate planting material height adjacent to the over-head utility power lines. Further, Staff has also recommended another Condition (Site Design Condition 2) that requires any removed planting material to follow the necessary permitting process and be replaced. Any required planting material that cannot be replaced must apply for the appropriate variances prior to the removal of the planting material. These Conditions of Approval will ensure the planting material within the buffer will remain or require the removal and or replacement of the required landscape material through Zoning processes. Additionally, the request only will impact the vegetation and easement conditions of the subject site. Therefore, Staff finds the request to not be detrimental to the public welfare of the surrounding properties.

CONCLUSION: Staff has evaluated the standards listed under Article 2.B.3.E.6 Standards for Zoning or Subdivision Variance and determined that the request for a Type 2 Variance is consistent with the Code. Therefore, Staff recommends approval of the Type 2 Variance, as it complies or meets these standards subject to the Conditions of Approval as indicated in Exhibit C.

CONDITIONS OF APPROVAL

EXHIBIT C: Type 2 Variance - Standalone

ALL PETITIONS

1. The approved Preliminary Site Plan is dated October 12, 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)

SITE DESIGN

1. Prior to final Development Review Officer Approval, the landscape details on the Regulating Plan shall be revised to provide landscaping that conforms to the height and location requirements of Article 7.C.5.2.a.4 Planting near overhead Electric Utilities. (DRO: ZONING - Zoning)

2. Any landscape material that is requested to be removed shall obtain the necessary Tree Removal Permit subject to the requirements of Art. 7.B.5, Tree Removal and Replacement Permit and be replaced. If the vegetation cannot be replaced, the required Variance(s) shall be applied for with Zoning department prior to the removal of any of the required planting material. (ONGOING: ZONING - Zoning)

VARIANCE

1. 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. (BLDGPM: BUILDING DIVISION - Zoning)

2. The Development Order for this non-concurrent Variance shall be valid till November 23, 2022, a period of one year from the date of the Zoning Hearing. The Property Owner must secure a Building Permit or Commencement of Development to vest this Variance. (DATE: MONITORING - Zoning) (DATE: MONITORING - Zoning)

COMPLIANCE

1. In Granting this Approval, the Zoning Commissioners relied upon the oral and written representations of the 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 Voluntary Commitments of this Approval. (ONGOING: MONITORING - Zoning) (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 - Land Use Map

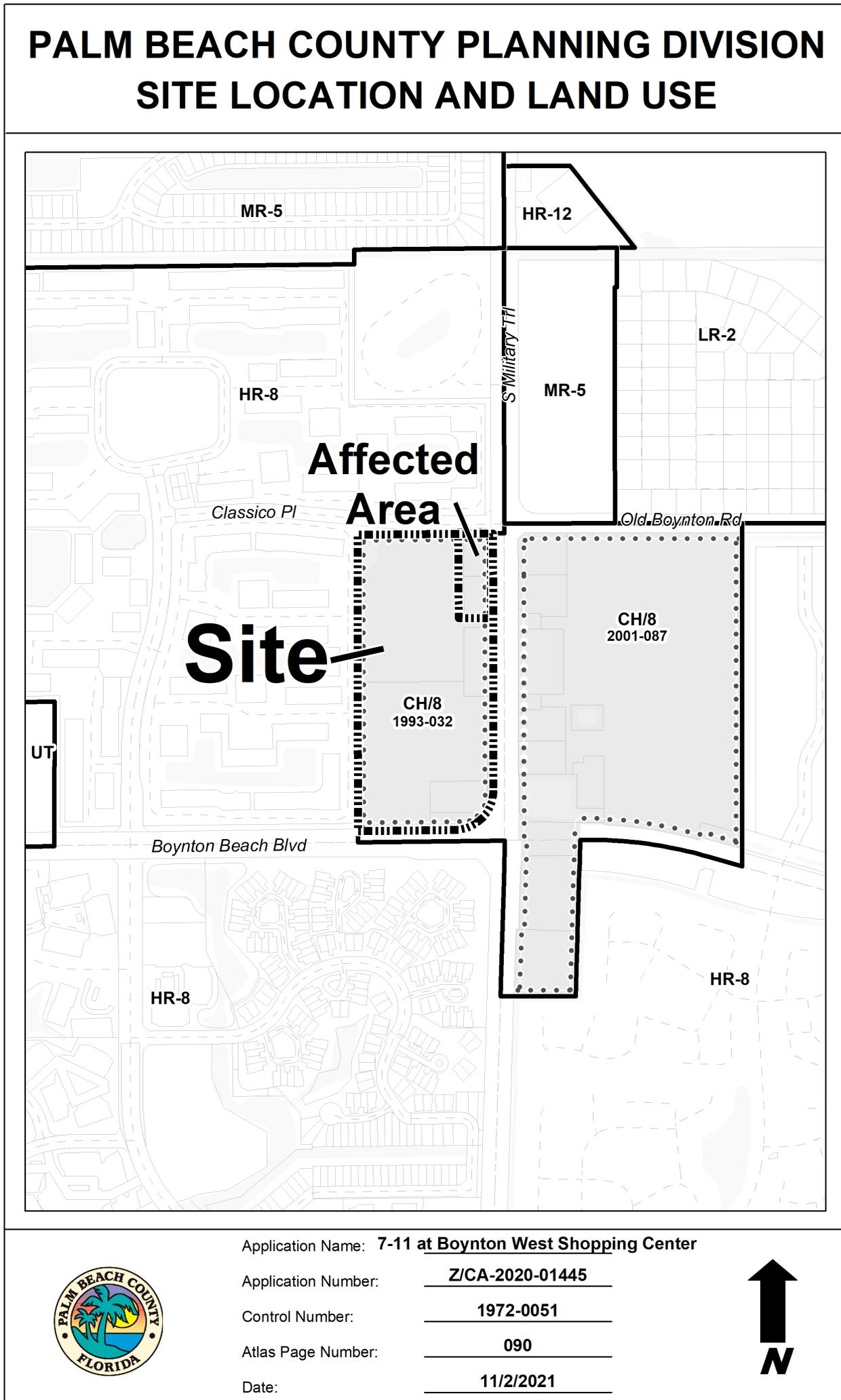


Figure 2 - Zoning Map

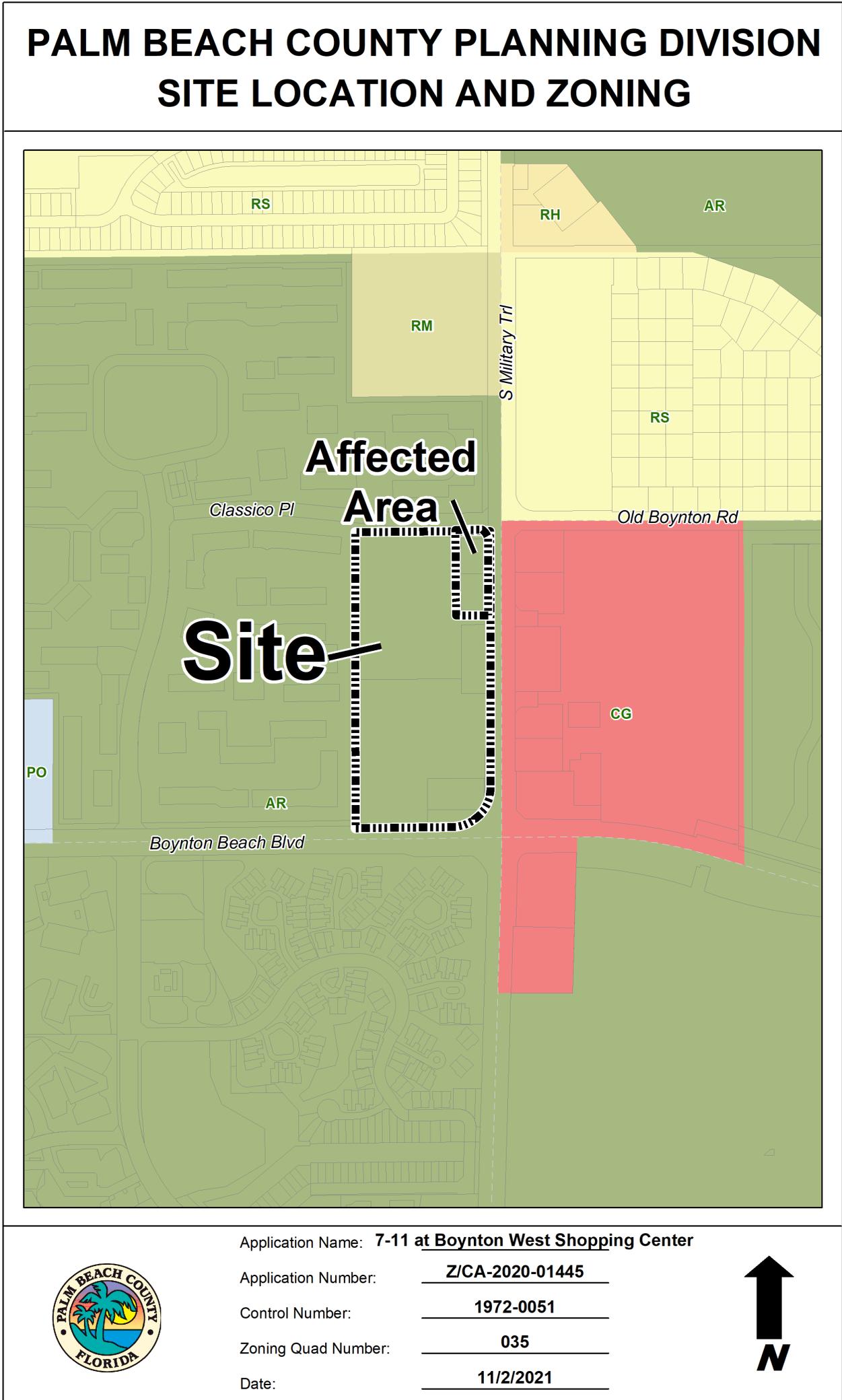
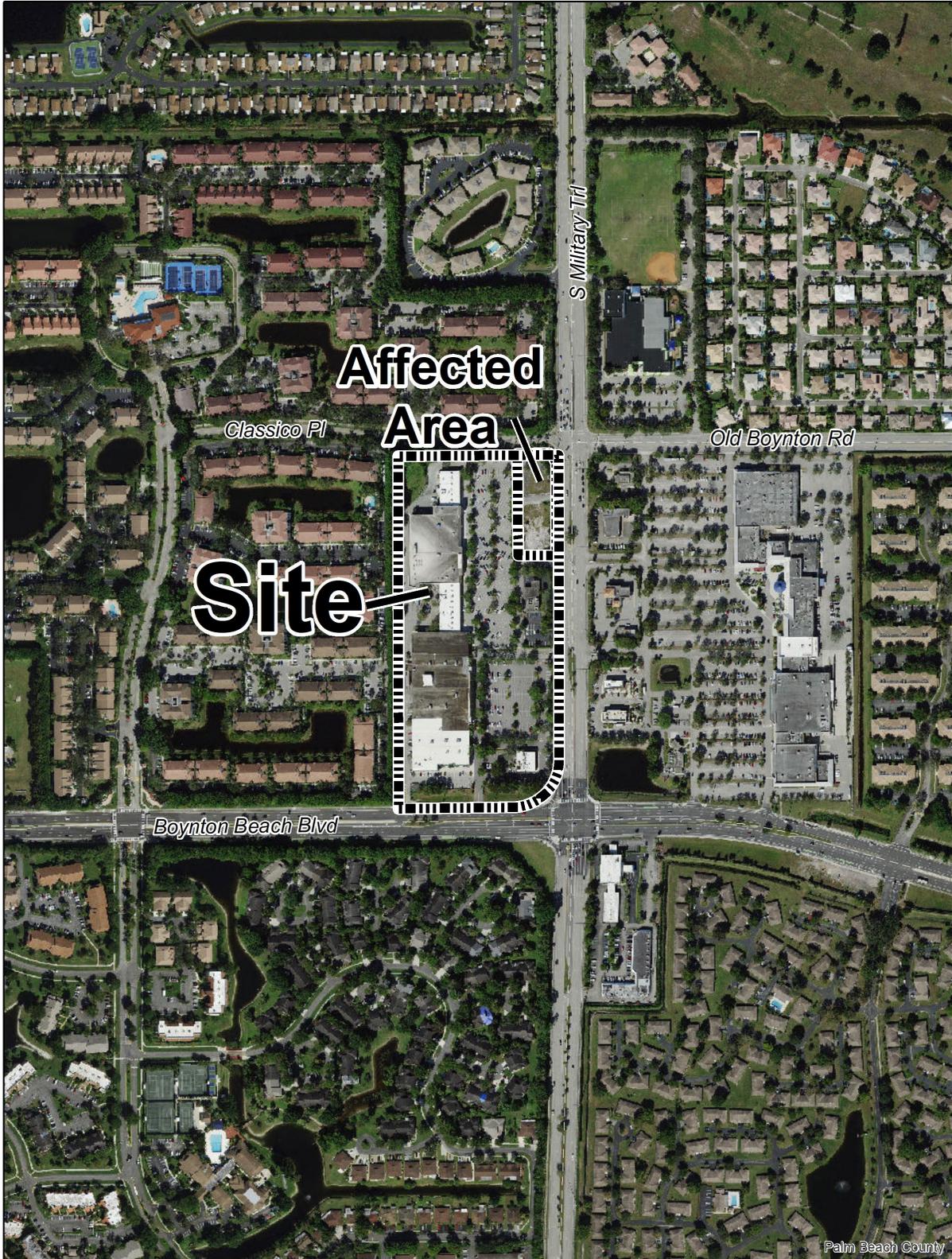


Figure 3 - Aerial

PALM BEACH COUNTY PLANNING DIVISION SITE LOCATION



Application Name: **7-11 at Boynton West Shopping Center**

Application Number: Z/CA-2020-01445

Control Number: 1972-0051

Atlas Page Number: 090

Date: 11/2/2021

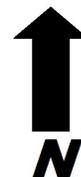


Exhibit D – Disclosure of Ownership

PALM BEACH COUNTY - ZONING DIVISION

FORM # 8

DISCLOSURE OF OWNERSHIP INTERESTS – APPLICANT

[TO BE COMPLETED AND EXECUTED ONLY WHEN THE APPLICANT IS NOT THE OWNER OF THE SUBJECT PROPERTY]

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 Grant Distel, 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 [] Sr Director-Development [position —e.g., president, partner, trustee] of 7-Eleven, Inc. [name and type of entity - e.g., ABC Corporation, XYZ Limited Partnership], (hereinafter, "Applicant"). Applicant seeks Comprehensive Plan amendment or Development Order approval for real property legally described on the attached Exhibit "A" (the "Property").
2. Affiant's address is: 3200 Hackberry Road, Irving, TX 75063

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 Applicant. 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 Applicant's application for Comprehensive Plan amendment or Development Order approval. Affiant further acknowledges that he or she is authorized to execute this Disclosure of Ownership Interests on behalf of the Applicant.
5. Affiant further acknowledges that he or she shall by affidavit amend this disclosure to reflect any changes to ownership interests in the Applicant 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.


Grant Distel, Affiant
(Print Affiant Name)

NOTARY PUBLIC INFORMATION:

STATE OF FLORIDA
COUNTY OF ~~PALM BEACH~~ LEE

The foregoing instrument was acknowledged before me by means of [] physical presence or
[] online notarization, this 27 day of APRIL, 20 21 by
Grant Distel (name of person acknowledging). He/she is personally
known to me or has produced PERSONALLY KNOWN (type of identification) as
identification and did/did not take an oath (circle correct response).

Joseph Henthorn
(Name - type, stamp or print clearly)

Joe Henthorn
(Signature)

My Commission Expires on: 9/29/23



EXHIBIT "A"

PROPERTY

Parcel 1: 00-42-45-23-05-000-0060
Boynton West Shopping Center E 130 FT of N 153.11 FT
of S 1347.32 FT (Less E 10 FT Addl Military Trail R/W)

Parcel 2: 00-42-45-23-05-000-0050
Boynton West Shopping Center E 130 FT of N 185 FT
of S 1194.21 FT (Less E 10 FT Addl Military Trail R/W)

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 Guillermo Zegri, 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 Authorized Agent _____ [position - e.g., president, partner, trustee] of KIR Boynton L.P. [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: 500 North Broadway, Ste 201
Jericho, NY 11753

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.

DocuSigned by:
Guillermo Zegri
47E193F5B02B4BE...
Guillermo Zegri, Affiant
(Print Affiant Name)

NOTARY PUBLIC INFORMATION:

STATE OF FLORIDA
COUNTY OF ~~PALM BEACH~~ Orange

The foregoing instrument was acknowledged before me by means of [] physical presence or [X] online notarization, this 28th day of April, 2021 by Guillermo Zegri (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).

Nicole L Ewing
(Name - type, stamp or print clearly)

DocuSigned by:
Nicole Ewing
68E18D392B51488...

My Commission Expires on: 4-5-2025

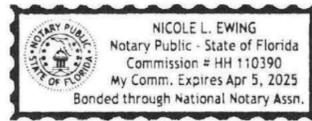


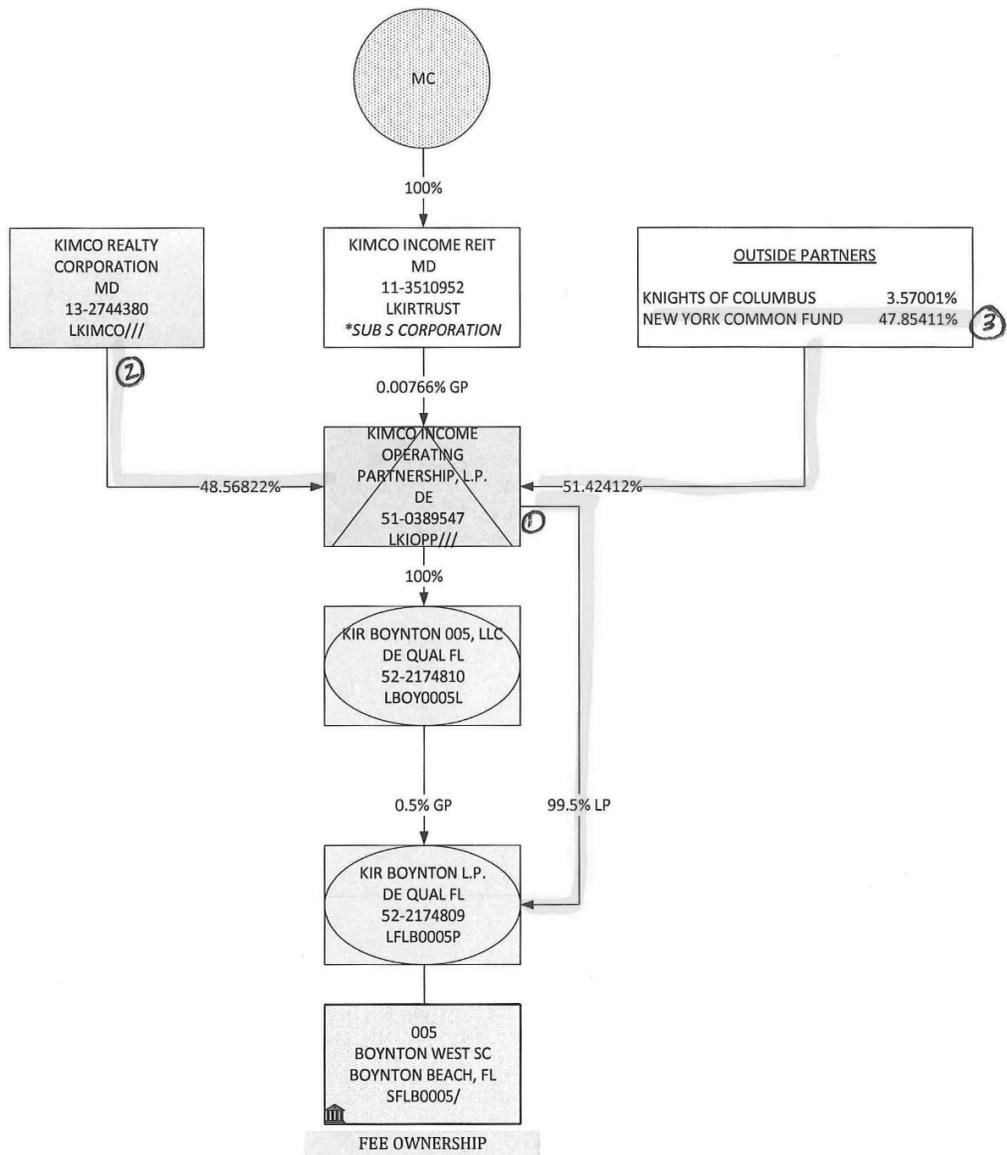
EXHIBIT "A"

PROPERTY

Parcel 1: 00-42-45-23-05-000-0060
Boynton West Shopping Center E 130 FT of N 153.11 FT
of S 1347.32 FT (Less E 10 FT Addl Military Trail R/W)

Parcel 2: 00-42-45-23-05-000-0050
Boynton West Shopping Center E 130 FT of N 185 FT
of S 1194.21 FT (Less E 10 FT Addl Military Trail R/W)

KIR BOYNTON L.P.



Addresses of entities owning 5% or more of the ownership interest in the property:

- ① Kimco Realty Corporation
3333 New Hyde Park Road
Suite 100
New Hyde Park, NY 11042
- ② Kimco Income Operating Partnership, L.P.
c/o Kimco Realty Corporation
3333 New Hyde Park Road
Suite 100
New Hyde Park, NY 11042
- ③ New York State Comm Retirement Fund
59 Maiden Lane, 30th Floor
NY, NY 10038

SECTION 3B TAB 33

Exhibit E – Applicant’s Justification Statement dated October 12, 2021



Our File Number: 00039461.00009
Writer’s Direct Dial Number: (561) 650-0719
Writer’s E-Mail Address: jlong@gunster.com

May 3, 2021 (Updated August 9, 2021, September 13, 2021, October 11, 2021)

Mr. Timothy Haynes
Senior Site Planner
Palm Beach County
2300 N Jog Road
West Palm Beach, FL 33411-2741

**Re: 7-Eleven – Boynton West Shopping Center Justification Letter
Type 2 Variance [Article 7, Chapter C, Section 5(A)]**

Dear Tim:

It is our pleasure to submit on behalf of our client, 7-Eleven Inc. (“7-Eleven”), a Type 2 Variance Application to provide for a 100% Utility Easement Overlap for the 7-Eleven @ Boynton West Shopping Center to conform to the Development Review Officer stamped plans. Boynton West Shopping Center is the commercial pod for Country Club Trails Planned Unit Development (“PUD”).

History and Overview

Country Club Trails PUD was first approved by Palm Beach County in 1972 as Petition No. 1972-0051. The Master Plan for Country Club Trails PUD indicates that the commercial area totals 16.8 acres. The .93 acre commercial tract (“Site”) fronts on the west side of Military Trail between Classico Place and Boynton West Road.

The Site received a Development Order, Requested Use and Type 2 variances approvals in late 2017. Copies of the Resolutions that approved the 7-Eleven for the Site are included with this submittal. Upon receiving approval our client proceeded with the dedication of the land for the new turn-lane within the shopping center. Palm Beach County requires all land to be free and clear before they will accept the property and to comply with this free and clear policy existing FPL power poles needed to be relocated. The process to relocate the power poles and the delays that Covid-19 created with all construction projects delayed the relocation of the poles until just a few months ago. The power poles have now been relocated consistent with approved plans, and the abandonment application is proceeding forward. During the review of the abandonment application an oversight was discovered by Palm Beach County Zoning. The stamped,

approved plan for the project showed a 100% easement overlap for the 10' right of way buffer, however the applications filed did not correctly call out the 100% overlap as part of the request.

To correct this oversight and to allow the project to move forward we have submitted a Type 2 variance application to provide for a 100% utility overlap. It is very important to note that the Boynton West Shopping Center was approved and developed with 100% overlap of the landscape buffer and utility easements, please see **Landscape Exhibit "B."** The 100% overlap is a condition that has existed at this shopping center and the Site for nearly 50 years. Our application will not allow for anything that has not historically already existed and operated at this Site.

Our client is excited to bring the approved neighborhood a safe high-quality convenience store with gas sales which will fill a need. Gas station patrons prefer additional amenities and site security that older gas stations often do not provide. This site will have a state-of-the-art security system, will serve gourmet food items and good coffee and will carry a wide array of convenience items. This project will help revitalize this existing older shopping center.

Variance

Due to the unique shape and reconfiguration of this property and the right-of-way dedication noted above, the applicant has requested a variance to provide 100% utility easement overlap as noted below:

1.) Article 7(C)(5)(A)

The site is only 110' wide after the 10' turn lane dedication, which was required by Palm Beach County. The narrow width of the lot is not something that the property owner nor the applicant created. The Zoning Commission granted variances in 2017 to accommodate and acknowledge the unique site constraints. Variances for reduced right of way buffer, divider median, divider median canopy trees and reduce the number and dimensions for point of service/queuing were approved, see ZV-2017-029 & ZV-2017-030.

The unique lot configuration, which is a historic, inherited condition our client did not create provides a hardship that requires a 100% utility easement overlap of the landscape buffer. The 100% overlap has no effect upon the landscaping that will be installed within this right of way buffer. All code required planting will be provided along Military Trail, all the landscaping will comply with FPL's "Right Tree, Right Place" regulations. The FPL Utility lines have existed along the shopping center's Military Trail frontage since the construction of the shopping center nearly 50 years ago. Any new redevelopment that is proposed must comply with the Right Tree, Right Place regulations. The requirement to comply with the FPL planting standards was a review comment that was addressed and complied with during the early stages of review with this application. The landscape plans for this project

May 3, 2021 (Updated August 9, 2021, September 13, 2021, October 11, 2021)
Page 3

have contained the language which requires compliance with the FPL planting standards from the beginning of this project, nothing has changed with the plans on what to plant under the FPL power lines, our project must comply with the FPL planting standards.

The specific ULDC standards for variances are addressed in the included **Type II Variance Standards, attached as Exhibit "A."**

If you have any questions or need further information about this request, please do not hesitate to contact me at 561-650-0719.

Best regards,

Josh Long

Joshua I. Long, AICP

Enclosures

cc: Client

Exhibit "A"
TYPE II VARIANCE STANDARDS

Request for 100% overlap of Utility Easement in ROW Buffer
ARTICLE 7, CHAPTER C, SECTION 5(A)

Section 2.B.7.E.6, Standards for Zoning or Subdivision Variance

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: [Ord. 2006-036]

- 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 zoning district.

The narrow width of the lot creates design constraints which are unique for this site. The loss of 10' of land for a deceleration lane only complicates the design issues. With only 110' of width it is not possible to utilize the site in a way that complies with today's buffer, travel lane and queuing standards. Modern outparcels have significantly wider dimensions to account for today's modern design standards.

The applicant is dedicating 10' from the east side of the property along Military Trail for a right turn lane as a public benefit. This will provide a significant public benefit. In recognition of this and the narrow configuration of the existing property, the applicant needs to provide 100% utility easement overlap within the ROW buffer along most of their Military Trail frontage. These facts are peculiar to this specific site.

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

The site has been in its existing size and configuration for decades and was not created by the applicant. The small, narrow site and the existence of FPL power lines along Military Trail created special circumstances that the application did not create. The required dedication of 10' of private property along Military Trail for the deceleration land compounded the already existing site design challenges.

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

No special privilege would be conferred on this applicant by the approval of these variances. Any other property owner with the same or similar circumstances could request the same relief. Moreover, this continues a longstanding condition where the buffer and utility easement were concurrent.

- 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 zoning district, and would work an unnecessary and undue hardship.

A literal enforcement of the terms of the ULDC in this case would create a significant hardship for this application because the site could not be designed to accommodate the proposed use. The taking of the 10' of private land and the existing narrow site creates a lot so narrow and small that not all of the County's requirements can be met.

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

The building and other site amenities have been designed to the provide a viable, safe use of the property. The landscape buffer material will not be impacted by the granting of this variance, the Site will continue to provide all the required trees and shrubs required by code. All plantings will comply with FPL's "Right Tree, Right Place" regulations.

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

The Comprehensive Plan and the ULDC allow and encourage commercial uses where appropriate. They also encourage 'infill' development and the re-development of existing commercial properties. The ULDC in particular recognizes that not all properties are the same and that unique circumstances can sometimes arise which require variance relief. The granting of the requested variance is consistent with these goals, particularly as it will allow for an infill development that will help re-develop and revitalize a longtime vacant site.

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

The variance will not be injurious to the area nor will it be a detriment to the public, the variance allows for an overlap for the Utility Easement which is a condition that has existed at this site for nearly

50 years. The entire existing buffer along Military Trail was approved in the early 1970's with a 100% overlap and our application request the same 100% overlap which has existed on the site since it's inception. The 100% overlap that has existed since the shopping center was built has not been injurious to the area nor has it been a detriment to public welfare. The 100% overlap has no effect upon the landscaping that will be installed within this right of way buffer. All code required planting will be provided along Military Trail and those new plantings will comply with FPL's right tree right place criteria, see Landscape Exhibit "B."

Providing a new gas station and convenience store on this long vacant parcel enhances the neighborhood and provide a needed service to local residents and businesses. Gas stations in general have changed significantly over the last decade. Consumer demand has required gas stations to change their business model. Gas stations must now offer the amenities consumers expect and demand. The modern 7-Eleven convenience store features amenities and products that consumer's desires such as gourmet sandwiches, coffees, pastries and other local consumer needs. The new model also provides state of the art technology and security to provide a safe environment for neighbors to visit. The new 7-Eleven convenience store is first a neighborhood market and gathering place, then a gas station.

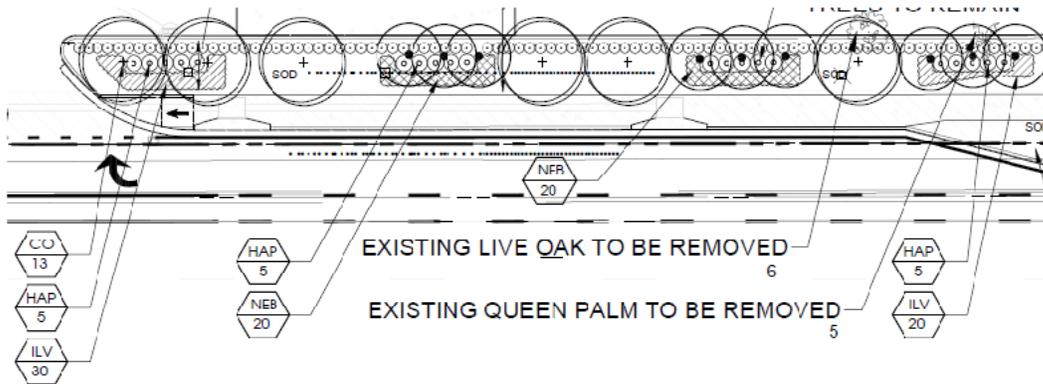
Landscape Exhibit “B”

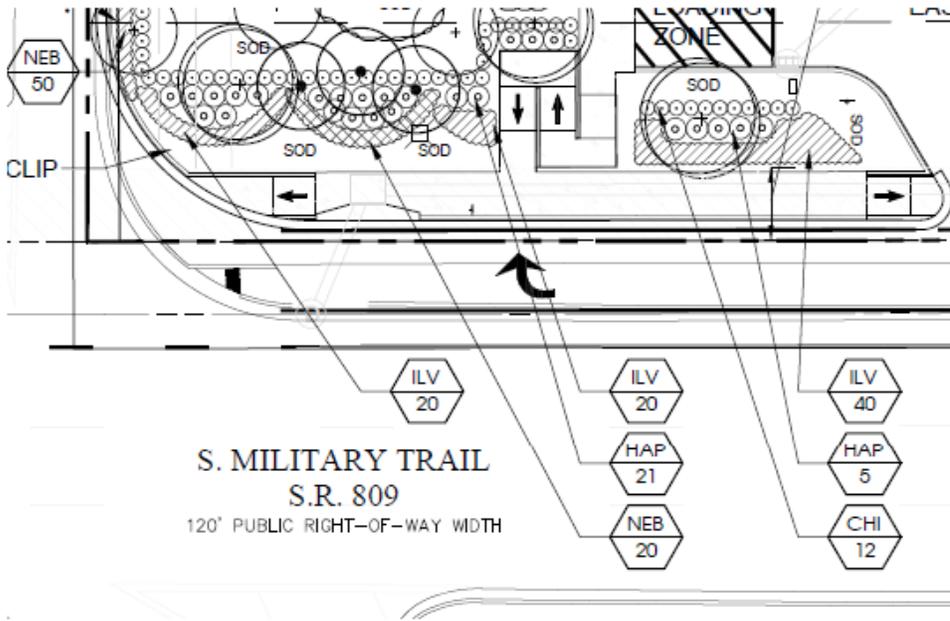
Landscape plans were submitted as part of the final DRO approval, those plans were submitted with the knowledge that the FPL power lines existed over the landscape buffer. The plans were designed to provide trees which complied with FPL’s Right Tree Right Place standards. Note #6 on PRP1 confirms that the plans will comply with FPL’s standards, an excerpt from that plan is provided below:

General Notes

1. All utility boxes and structures, not currently known or shown on the plan, shall be screened with Cocoplum plants on three (3) sides.
2. All prohibited, exotic and invasive species shall be removed from the entire site area of site prior to issuance of certificate of occupancy.
3. All planting areas to be irrigated to provide 100% coverage and provide adequate irrigation of landscape areas for the first full growing season and continue thereafter only as necessary to maintain required vegetation in good and healthy condition. Shop drawings to be submitted by the irrigation contractor for approval prior to installation.
4. The irrigation system shall be continuously maintained in working order.
5. All required landscape improvements must be inspected and approved by Palm Beach County prior to the issuance of a Certificate of Occupancy.
6. This plan has been designed to meet with the tree planting requirements contained within the FPL document entitled ‘Plant the Right Tree in the Right Place’ on new (proposed) plantings.
7. Planting adjacent to fire hydrants shall have a minimum clear radius of 7.5’ front and sides and 4’ in the rear as required by the NFPA Uniform Fire Code Florida Edition 18.3.4.1 Hydrants and PBCWUD standards.
8. No plant substitutions can be made without Owner’s and Palm Beach County’s approval.
9. An automatic Rain sensor shall be placed on-site as part of the required irrigation system.
10. This plan is conceptual and subject to change upon further review.

The plans provide the following trees, palms, and shrubs within the Military Trail Buffer: Geiger Trees, Sabal Palms, Firebush, Dwarf Yaupon Holly and Boston Fern. All the aforementioned species comply with FPL’s standards. Excerpts from the landscape plan’s Military Trail Buffer is provided below:





The concrete poles have been relocated and the landscape plan will plant the FPL Right Tree Right Place species around the new location of the FPL Poles. All code required landscaping will be provided within the buffer. Pictures of the relocated poles and the existing landscape buffer for the shopping center which has existed for nearly 50 years with a 100% landscape and utility easement overlap are shown on the following three pages of this exhibit.

Landscape Exhibit "B"



Landscape Exhibit "B"



Transmission Line Pole Relocated to make way for new deceleration turn lane

Landscape Exhibit "B"

