

**PALM BEACH COUNTY
ENGINEERING AND PUBLIC WORKS DEPARTMENT
LAND DEVELOPMENT DIVISION**

ZONING COMMISSION STANDALONE VARIANCE STAFF REPORT

Application No.: SV-2021-00459
Application Name: Evergreen Townhouse
Control No./Name: 2019-00177
Applicant(s): Evergreen 1 LLC
Owner(s): Evergreen 1 LLC
Agent(s): Brahm Development LLC - Dave Persaud
Telephone No.: (561) 373-2749
Project Manager: Scott Cantor, Division Director II

TITLE: a Subdivision Variance **REQUEST:** to allow access from a 30-foot right-of-way.

APPLICATION SUMMARY: Petition of Brahm Development, LLC, on behalf of Evergreen 1, LLC, requesting a variance from the requirement that access shall be by a 40-foot residential access roadway and to allow access from the 30-foot wide Right-of-Way of Orlando Avenue.

SITE DATA:

Location:	West side of Old Military Trail, approximately 600 feet north of Orlando Avenue.
Property Control Number(s)	00-42-43-24-00-000-3120
Existing Land Use Designation:	Medium Residential (MR-5)
Existing Zoning District:	Multi-Family Residential (Medium Density) District (RM)
Acreage:	4.52 acres
Tier:	Urban/Suburban
Overlay District:	N/A
Neighborhood Plan:	N/A
CCRT Area:	Old Trail
Municipalities within 1 Mile	West Palm Beach
Future Annexation Area	West Palm 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 one contact from the public regarding this project, with only questions.

PROJECT HISTORY:

The subject property currently has a Future Land Use designation of Medium Residential, 5 units per acre (MR) – 5 within the Multi-Family Residential (RM) Zoning District. The site is under Unincorporated Palm Beach County jurisdiction and lies within the boundaries of the Urban Redevelopment Overlay (URA). Specifically, the site is within the Old Trail Countywide Community Revitalization Area (CCRT). Historically, the property has never been developed and is currently vacant.

SURROUNDING LAND USES:

NORTH:

FLU Designation: High Density Commercial (CH-8)
 Zoning District: Residential Multi-Family (RM)
 Supporting: Commercial (Control No. 1975-00156)

SOUTH:

FLU Designation: Medium Residential (MR-5)
 Zoning District: Residential Multi-Family (RM)
 Supporting: Place of Worship (Control No. 1978-00203)

EAST (and across Old Military Trail):

FLU Designation: Medium Residential (MR-5) / High Density Commercial (CH-8)
 Zoning District: Residential Multi-Family (RM) / Residential Multi-Family (RM)
 Supporting: Residential / Commercial (Control No. 1978-00203 / 1984-00179)

WEST:

FLU Designation: High Density Residential (HR-12)
 Zoning District: Residential Multi-Family (RM)
 Supporting: Residential (Control No. 1973-00065)

**TYPE 2 / SUBDIVISION VARIANCE SUMMARY
 SUBDIVISION VARIANCE SUMMARY**

ULDC Article	Required	Proposed	Variance
11.E.2.A.2 Minimum Legal Access	40-foot right-of-way (ROW)	Existing 30-ft ROW	10-feet of ROW

FINDINGS:

Table 11.E.2.A-2 in Article 11 of the Unified Land Development Code (ULDC), requires this property to have access and frontage to a minimum 40 foot wide right-of-way. The right-of-way width of Orlando Avenue is 30 feet wide, so the applicant is requesting a 10 foot variance. As part of this application, the Property Owner is being conditioned to reconstruct the roads to local residential standards. The site is 4.52 acres and located on the west side of Old Military Trail and north of Orlando Avenue. This site is currently vacant and the Property Owner plans to seek development approvals to allow the construction of 44 additional multi-family residential units.

Engineering staff is recommending **APPROVAL** of the subdivision variance.

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

Applicant's Response: *The subject site is located on Old Military Trail which has a minimum ROW width of 40' and since the access to Old Military Trail is from Orlando Ave which has a ROW width of 30' for approximately 250 LF along Orlando Ave east of Old Military Trail.*

Staff Response: CORRECT. The width of the right-of-way this property fronts (Old Military Trail) is 40 feet wide, but Orlando Avenue only has a 30 foot wide right-of-way. As part of this application, both roadways are conditioned to reconstruct the physical roadways to local residential street.

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

Applicant's Response: *The subject property and adjacent right-of-way for Old Military Trail and Orlando Ave were platted as part of the Military Park which was recorded in January 14, 1925, long before adoption of the minimum ROW requirements, and long before ownership of the property by the current owner/applicant.*

Staff Response: CORRECT. The roads in this area do not meet the minimum right-of-way widths required by the code. These roads were created in 1925 by the Military Park plat, which was not at the result from the actions of the current property owner.

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

Applicant's Response: *The purpose of this application for a variance is to allow the property to be improved in a manner consistent with the PB County Future Land Use Map and Zoning regulations to add units to the site, and no special privilege is being requested.*

Staff Response: CORRECT. Granting this variance would allow the Property Owner to develop this property consistent with the current Zoning District and Future Land Use. The roadways leading to this development will be improved to local residential standards.

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 lands in the same zoning district, and would work an unnecessary and undue hardship.*

Applicant's Response: *The literal interpretation of the code would prohibit the applicant from improving this site in a manner consistent with the Future Land Use Map and Zoning regulations.*

Staff Response: CORRECT. 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. This property would have to acquire right-of-way from properties on Orlando Avenue from Old Military to Military Trial, which would also result in non-conforming lots.

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

Applicant's Response: *Granting of the variance is the minimum necessary to enable the improvement of the subject site in a manner consistent with the Future Land Use Map and Zoning regulations.*

Staff Response: CORRECT. Granting this variance is the minimum needed for the reasonable use of the property. The roadways are being conditioned to meet minimum standards.

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

Applicant's Response: *Granting the variance would allow improvement of the property in a manner consistent with the Comprehensive Plan and Zoning Code.*

Staff Response: CORRECT. Grant of this variance will allow this property to be developed in a manner consistent with the Comprehensive Plan and the ULDC.

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

Applicant's Response: *As granting the variance will enable improvement of the subject property and development will occur consistent with the Comprehensive Plan and Zoning regulations, it will not be injurious to the area.*

Staff Response: CORRECT. Grant of this variance will not be injurious to the public.

CONDITIONS OF APPROVAL

EXHIBIT C – Subdivision Variance - Standalone

ENGINEERING

1. Prior to the issuance of the first building permit Orlando Avenue and Old Military Trail will be improved to local residential street standards. (BLDGPMT: MONITORING - Engineering)
2. Property Owner shall construct a 5 foot wide concrete sidewalk along the west side of Old Military Trail from the north property line to the intersection of Old Military Trail and Orlando Avenue. 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. The sidewalk shall be completed prior to the issuance of the first certificate of occupancy. If approved by the County Engineer, the Property Owner may submit payment in lieu of construction in an amount approved by the County Engineer and the condition shall be considered satisfied. (BLDGPMT/CO: MONITORING - Engineering)
3. The Development Order for this Standalone Variance shall be tied to the Time Limitations of the Development Order for CA-2020-02103. The Property Owner shall secure a Building Permit or Commencement of Development to vest this Variance (ONGION: ENGINEERING – Monitoring)

DISCLOSURE

1. All applicable state or federal permits shall be obtained before commencement of the development authorized by this Development Permit.

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Figure 1 - Land Use Map

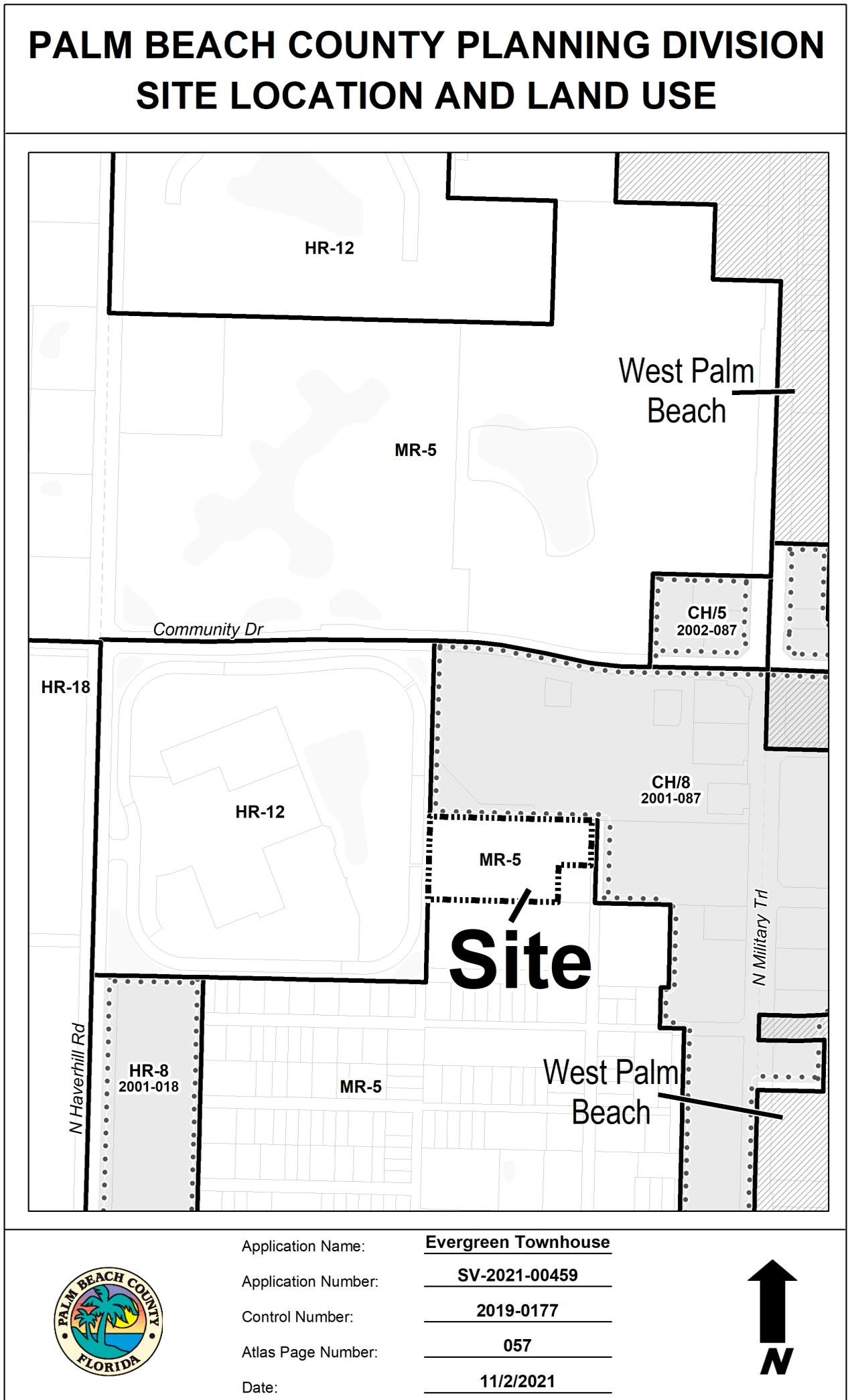


Figure 2 - Zoning Map

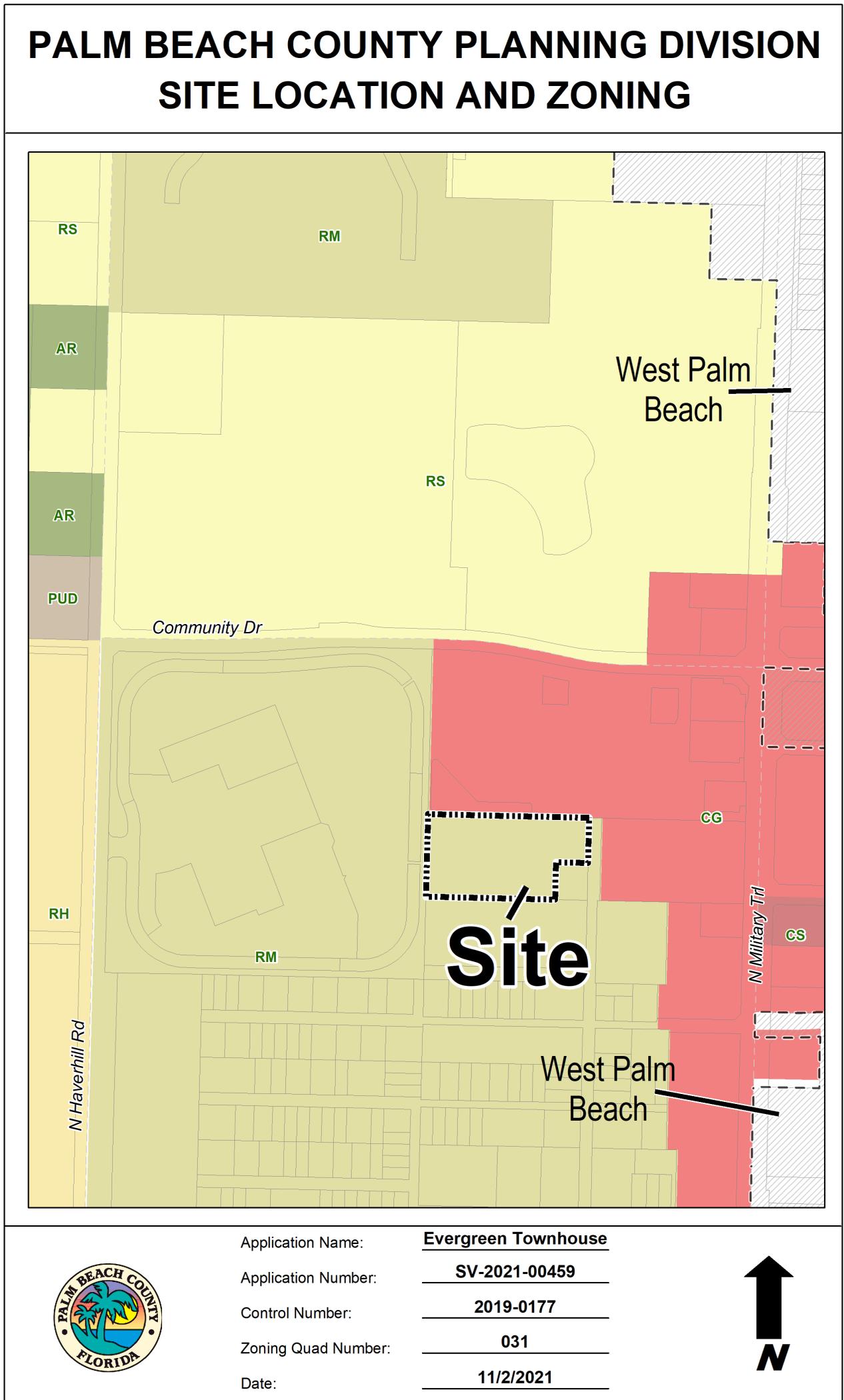
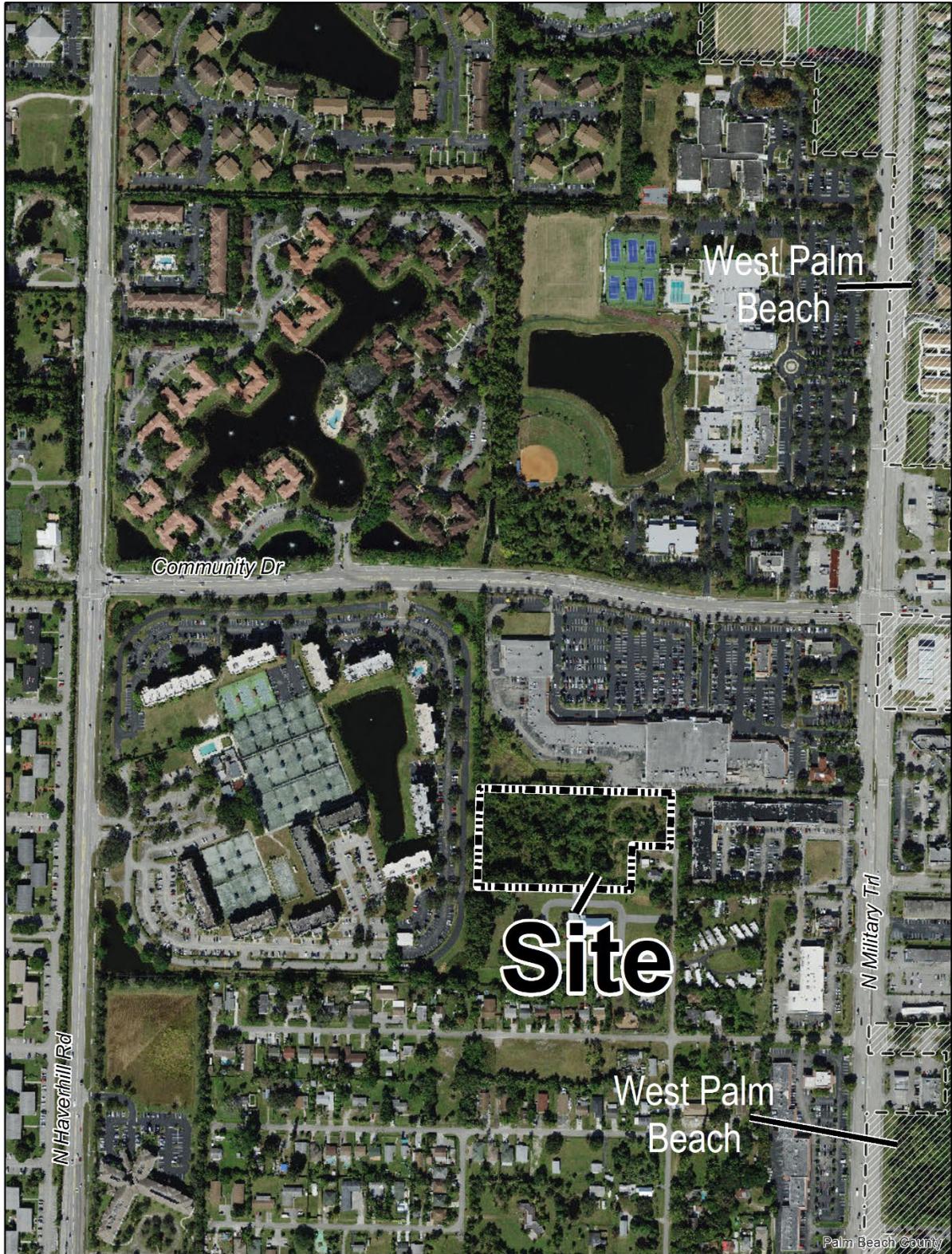


Figure 3 - Aerial

PALM BEACH COUNTY PLANNING DIVISION SITE LOCATION



Application Name:	<u>Evergreen Townhouse</u>
Application Number:	<u>SV-2021-00459</u>
Control Number:	<u>2019-0177</u>
Atlas Page Number:	<u>057</u>
Date:	<u>11/2/2021</u>



Exhibit D – Disclosure of Ownership

PALM BEACH COUNTY - ZONING DIVISION

FORM # 8

DISCLOSURE OF OWNERSHIP INTERESTS – APPLICANT

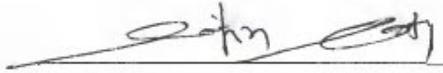
[TO BE COMPLETED AND EXECUTED ONLY WHEN THE APPLICANT IS NOT THE OWNER OF THE SUBJECT PROPERTY]

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 Vipin Gupta, 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 [] President [position—e.g., president, partner, trustee] of Evergreen 1 LLC [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: 5340 N. Federal Hwy
Ste 100
Lighthouse Point, FL 33064
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.


Vipin Gupta, 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 26th day of February, 2021 by Vipin Gupta (name of person acknowledging) He/she is personally known to me or has produced FLIDL: G130-860-73-166 (type of identification) as identification and did/did not take an oath (circle correct response).

Liliana P. Humphreys
(Name - type, stamp or print clearly)


(Signature)

My Commission Expires on: Oct 30 2022

NOTARY'S SEAL OR STAMP

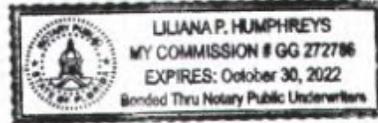


EXHIBIT "A"

PROPERTY

A parcel of Land in Palm Beach County, Florida more particularly described as:

The north 1/2 of the Southwest 1/4 of the Northeast of the Northwest 1/4 of Section 24, Township 43 South, Range 42 East, Less the East 150 feet of the South 150 feet thereof, and the Right of Way of Old Military Trail.

Street Address: 2869 Old Military Trail, West Palm Beach, FL 33417

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 VIRGIN CUOTA, 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 PRESIDENT [position - e.g., president, partner, trustee] of EVERGREEN 1, 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: 5340 N. FEDERAL HWY
STE 100
L1 BATHHOUSE PT 1FL 35064
- 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.

VIPIN Gupta

_____, 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 28th day of October, 2020 by Vipin Gupta (name of person acknowledging). He/she is personally known to me or has produced FLIDL: G130-860-73-1650 (type of identification) as identification and did/did not take an oath (circle correct response).

Liliana P. HUMPHREYS
(Name - type, stamp or print clearly)

Liliana P. Humphreys
(Signature)

My Commission Expires on: October 30, 2022



EXHIBIT "A"

PROPERTY

A parcel of Land in Palm Beach County, Florida more particularly described as:

The north ½ of the Southwest ¼ of the Northeast ¼ of the Northwest ¼ of Section 24, Township 43 South, Range 42 East, Less the East 150 feet of the South 150 feet thereof, and the Right of Way of Old Military Trail.

Street Address: 2869 Old Military Trail, West Palm Beach, FL 33417

Exhibit E – Applicant’s Justification Statement dated 02/22/2021

**2869 Old Military Trail
APPLICATION FOR SUBDIVISION
VARIANCE
Article 11.E.2.A & Table 11.E.2.A-2
Justification Statement
February 22, 2021**

Background

The subject site is a vacant land of 4.53 acres and is zoned multi-family. The proposed development includes six (6) buildings, totaling forty-four (44) townhome units.

Property Information

- Address – 2869 Old Military Trail
- PCN – 00-42-43-24-00-000-3120 (see attached Property Appraiser Aerial)
- Lot dimensions – See attached survey
- Square footage – 197,326.8 SF = 4.53 acres
- Future Land Use Designation – MR-5
- Zoning – RM, Residential

Project History

This property was purchased in September 2016 for multifamily development. For the past year we have been working with the county staff in order to create a project that will improve the existing vacant property with a well-planned multifamily residential development. The proposal provides for the development of 44 multifamily units. Developing the site with multifamily residential units allows for a more creative and efficient use of land and provides flexibility in design to accommodate the surrounding residential communities. The multi-family units will be strategically placed throughout the proposed 4.53 acre residential community allowing for a recreation area, pedestrian connectivity, and buffers that meet ULDC requirements for RM zoning districts.

Subdivision Variance Request

The project is located northern end of Old Military Trail where it dead-ends. The right-of-way of Old Military Trail from Orlando Ave north to the project location where it dead-ends is 50' to 45' wide. For a Local Residential Street, Table 11.E.2.A-2 – Chart of Minor Street in Article 11 of the ULDC requires a minimum of 40' of right-of-way width to allow access for any type of residential provided that the maximum allowable ADT is not exceeded. However, Orlando Ave right-of-way going from east to west between Military Trail and Old Military Trail is 55' and narrows to 45' and approximately 250' west of Old Military Trail, it narrows to 30' (see attached ROW Exhibit). Although the platted width has been 30', a Subdivision Variance is being required by the County to allow the proposed development on Old Military Trail. **Consequently, this application requests a variance from Table 11.E.2.A-2.**

As required by County staff, a traffic statement was prepared by Atlantic Engineering Services, Inc. on October 10, 2020. Pursuant to Table 11.E.2.A-2 the maximum allowable ADT is 1,500 and the traffic statement states that the existing traffic volume will be 194 daily trips and the projected traffic (with the new development) is 538 daily trips. Consequently, this proposal does NOT exceed the allowable ADT in Table 11.E.2.A-2. Please see the Variance Chart below.

2.B.10.A Variance Chart

ULDC Code	Required	Provided	Variance	Approval Date
Table 11.E.2.A-2	40' ROW Width	30' ROW Width	10'	TBD

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

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

The subject site is located on Old Military Trail which has a minimum ROW width of 40' and since the access to Old Military Trail is from Orlando Ave which has a ROW width of 30' for approximately 250 LF along Orlando Ave east of Old Military Trail.

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

The subject property and adjacent right-of-way for Old Military Trail and Orlando Ave were platted as part of the Military Park which was recorded in January 14, 1925, long before adoption of the minimum ROW requirements, and long before ownership of the property by the current owner/applicant.

- c) Granting the variance shall not confer upon the Applicant any special privilege denied by the Plan and this Code to other parcels of land, buildings, or structures, in the same district (no special privilege):

The purpose of this application for a variance is to allow the property to be improved in a manner consistent with the PB County Future Land Use Map and Zoning regulations to add units to the site, and no special privilege is being requested.

- d) Literal interpretation and enforcement of the terms and provisions of this Code would deprive the Applicant of rights commonly enjoyed by other parcels of land in the same district, and would work an unnecessary and undue hardship (undue hardship);

The literal interpretation of the code would prohibit the applicant from improving this site in a manner consistent with the Future Land Use Map and Zoning regulations.

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

Granting of the variance is the minimum necessary to enable the improvement of the subject site in a manner consistent with the Future Land Use Map and Zoning regulations.

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

Granting the variance would allow improvement of the property in a manner consistent with the Comprehensive Plan and Zoning Code.

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

As granting the variance will enable improvement of the subject property and development will occur consistent with the Comprehensive Plan and Zoning regulations, it will not be injurious to the area.