

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

Application No.: ZV/ABN/DOA-2021-01954
Application Name: Terra Nova MUPD
Control No./Name: 2004-00457 (Terra Nova MUPD)
Applicant: Principal Commercial Group LLC
Principal Development Group LLC
Owners: Principal Commercial Group LLC
Principal Development Group LLC
Agent: AJP Consulting Services, LLC - Polidoro Africano
WGINC - Matthew Barnes
Telephone No.: (561) 713-1687, (561) 687-2220
Project Manager: Imene Haddad, Senior Site Planner

TITLE: a Type 2 Variance **REQUEST:** to reduce the width of divider medians and relocate foundation planting
TITLE: a Development Order Abandonment **REQUEST:** to abandon a Type 1 Restaurant with drive-through (within Building A)
TITLE: a Development Order Amendment **REQUEST:** to modify the Site Plan; add square footage; delete and modify uses

APPLICATION SUMMARY: Proposed is a Development Order Amendment (DOA), Type 2 Variance (ZV), and a Development Order Abandonment (ABN) for the Terra Nova MUPD. The 17.67 acre site is approved as a Multiple Use Planned Development (MUPD) and is currently undeveloped.

The DOA proposes to reduce the size of Retail Building A from 12,850 sq. ft. to 12,350 sq. ft. (-500 sq. ft.), and to expand Building B from 11,650 sq. ft. to 19,209 sq. ft. (+ 7,559s sq. ft.). The Type 2 Variance proposes to relocate foundation plantings for Buildings A and B, and to reduce divider medinas. The Development Order Abandonment proposes to abandon a Class A Conditional Use for a Type I Restaurant with Drive-through.

The Preliminary Site Plan (PSP) indicates two one-story buildings with 27,519 sq. ft. of Retail uses and Type I Restaurant with Drive-through (4,000 sq. ft.) and 600 sq. ft. of outdoor seating; 212 Multifamily dwelling units in five buildings; 1.37 acres of recreation area with a clubhouse; a maintenance building for the residential component; and 755 parking spaces. Access to the site will remain from Hagen Ranch Road and Atlantic Avenue.

SITE DATA:

Location:	Northwest corner of Atlantic Avenue and Hagen Ranch Road
Property Control Number(s):	00-42-46-16-38-001-0000; 00-42-46-16-38-002-0000
Existing Future Land Use Designation:	Commercial High, with an underlying MR-5 (CH/5)
Existing Zoning District:	Multiple Use Planned Development District (MUPD)
Total Acreage:	17.67 acres
Tier:	Urban/Suburban
Overlay District:	N/A
Neighborhood Plan:	N/A
CCRT Area:	N/A
Municipalities within 1 Mile:	N/A
Future Annexation Area:	N/A
Commission District	District 5, Commissioner Maria Sachs

RECOMMENDATION: Staff recommends approval of the requests subject to the Conditions of Approval as indicated in Exhibits C-1 and C-3.

PUBLIC COMMENT SUMMARY: At the time of publication, Staff has received no contacts from the public regarding this application.

PROJECT HISTORY: The site was rezoned from the AR Zoning District to the MUPD Zoning District on November 17, 2005 (Resolution R-2005-2290), for the development of 155,000 sq. ft. of commercial uses in five buildings. The development included Retail Sales, Financial Institutions, and Restaurant uses in one and two-story buildings.

Subsequently, on February 24, 2011, approval of a DOA (Resolution R-2011-0223) increased the commercial development by 20,800 sq. ft. for a total of 175,800 sq. ft.; revised uses to include 52,000 sq. ft. of Medical Office use; reconfigured the site layout; increased the number of buildings to a total of six; and, amended Conditions

Zoning Commission
Application No. ZV/ABN/DOA-2021-01954

May 5, 2022

Page 1
Terra Nova MUPD

of Approval to reflect revisions to the development. The approved MUPD was never developed and the site remained vacant.

At the January 27, 2020 hearing the BCC approved a Development Order Amendment and Class A Conditional Uses (DOA-2018-01690) to reconfigure the Site Plan to allow for the development of a mix of commercial and residential uses, by reducing previously approved commercial sq. ft. and adding Multifamily residential units and four Class A Conditional uses, which included two Type 1 Restaurants with Drive-throughs; density bonus dwelling units through the WHP ; and, TDR density bonus dwelling units.

SURROUNDING LAND USES:

NORTH:

FLU Designation: Medium Residential (MR-5)
Zoning District: Residential Planned Unit Development (PUD)
Supporting: Residential (Villagio Isles PUD, Control No 2004-00456) \

SOUTH:

FLU Designation: Commercial High, with an underlying HR-8 (CH/8)
Zoning District: General Commercial (CG)
Supporting: Commercial (Redgrave and Rosenthal Attorneys office, Control No 2014-00063)

SOUTH – across Atlantic Avenue:

FLU Designation: Medium Residential (MR-5)
Zoning District: Residential Transitional Urban (RTU)
Supporting: Residential (Eagle Point, Control No 1986-00007)

FLU Designation: Medium Residential (MR-5)
Zoning District: Residential Single Family (RS)
Supporting: Vacant (Palm Beach County, no Control No)

EAST:

FLU Designation: Commercial High, with an underlying HR-8 (CH/8)
Zoning District: General Commercial (CG)
Supporting: Commercial (Redgrave and Rosenthal Attorneys office, Control No 2014-00063)

FLU Designation: Commercial High, with an underlying HR-8 (CH/8)
Zoning District: General Commercial (CG)
Supporting: Vacant (Parcel B of the Chevron development, Control No 1981-00067)

FLU Designation: Commercial High, with an underlying HR-8 (CH/8)
Zoning District: General Commercial (CG)
Supporting: Commercial (Chevron Gas Station, Control No 1981-00067)

EAST – across Hagen Ranch Road:

FLU Designation: Commercial High, with an underlying HR-8 (CH/8)
Zoning District: General Commercial (CG)
Supporting: Commercial (The Reserve Self Service Storage at Oriole Plaza, Control No 1973-00039)

FLU Designation: Commercial High, with an underlying HR-8 (CH/8)
Zoning District: General Commercial (CG)
Supporting: Commercial (Villages of Oriole Shops, Control No 1973-00039)

WEST:

FLU Designation: Medium Residential (MR-5)
Zoning District: Residential Planned Unit Development (PUD)
Supporting: Residential (Villagio Isles PUD Control No 2004-00456)

TYPE II VARIANCE SUMMARY:

#	ULDC Article	REQUIRED	PROPOSED	VARIANCE
V1	Art. 7.C.4.B, Divider Median	10’ Wide	7.42’ Wide	To allow a reduction for up to 2.58’ in width for divider medians
V2	Table 7.C.3.B, Foundation Planting and Dimensional Requirements	40% site façade foundation planting	0% side façade foundation planting for Buildings B, with proximate relocation of required plantings	100% of required planting for Site façade of Building B is relocated to the rear

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:*

V1-YES: The Applicant requests a Variance to allow a reduction in the width for two divider medians at the entrance of the development and one divider median along the drive isle to the north of building B. For this Variance request, special circumstances exist as a Florida Power and Light (FPL) easement (O.R.B. 32682, Page 1592) is located within the divider median to the east of the entrance of the development. The site is additionally constrained by previously established access point from Atlantic Avenue. 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.

For the median to the north of Building B, the Applicant states “The new grocery retail building B requires to be serviced with a Standard Type “B” (15’ x 55’) loading space and the maneuvering requirements for a semi-truck are such that the wider turning movements cannot accommodate full width divider medians.”

V2-YES: The plan shows foundation planting that is located within 30 feet of the building for Building B. This type of relocation was approved under and administrative waivers when the project was first approved. The Code has since been amended to only allow a 50 percent relocation. A variance request is now required for the request though the PSP still shows the previously proposed canopy overhangs similarly to the prior approval that supported the shift as to not conflict with architectural features of the building.

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

V1-YES: As indicated above, the special circumstances result from the location of the FPL easement and the previously approved access points, not any action by the Applicant. The ULDC requirement for a 10 ft. divider median width, in this case, if complied with, would require the user to reduce the number of parking spaces, which would prevent it from meeting required parking for the commercial portion of the MUPD.

V2-YES: The ULDC requires foundation planting to be provided along the facades of non-residential buildings. This Variance request is due to the ULDC amendment longer allowing for this type of approval to be administrative. According to the Applicant’s justification statement, the ULDC only requires 40% of the side façade to have foundation planting by relocating the foundation planting to the rear side of the building, 100% of the rear side will have foundation, which is a net of 60%.

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:*

V1 and V2-YES: The Palm Beach County Zoning Commission has recently granted similar variances for comparable developments 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:*

V1-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 medians adjacent to driveways where external access points are located for PDDS to channel traffic circulations would require the user to redesign the site with potential implications of reduced parking and adjacent drive isles creating an unnecessary and undue hardship to the function of the commercial center as a whole.

V2-YES: As described above, the literal interpretation of the Code would require foundation planting along the facades of non-residential buildings. Foundation planting along the facades serves to soften the appearance of the architecture. However, providing foundation planting along the west façade of building B would result in loss of parking spaces. Art. 3. E.1.A.1. [PDD] Purpose and Intent, encourages ingenuity and creativity in design and infill development, using flexible and innovative land development techniques. The proposed design would meet this standard and the literal interpretation of the Code would result in 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:*

V1-YES: The reduction in the island is the minimum necessary to have healthy plant material in the median and not conflict with the easement that exists.

V2-YES: Granting of the variance request is the minimum possible to make reasonable use of the land. Staff have outlined reasons for the variances in the previous standards, and the purposes and needs for requiring the variance. The requested variance is only for the west façade, all other foundation plantings will comply with Code requirements.

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

V1-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 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 MUPD, the Applicant has demonstrated that they will continue to meet the plant material requirements in the reduced width divider median, which provides a visual clue of separation to the drivers.

V2-YES: The granting of this variance is consistent with the intent of the Comprehensive Plan and ULDC. As stated above, the Code’s stated purpose and intent of PDDs is to encourage ingenuity and imagination on the part of design and development professionals to create developments that promote sustainability, enhances the built environment, encourages economic growth and infill development using flexible and innovative land development techniques. The proposed variance will allow the Applicant to use creative solutions to meet the Design Objectives of the Code, without reducing the amount of landscape material the Code requires for foundation planting areas.

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

V1 and V2 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 site.

Development Order Abandonment:

A DO for a Conditional Use or similar DO granted under Zoning Resolution No. 3-57, Ordinance No. 73-2, Ordinance No. 92-20, or Ordinance No. 2003-067, as amended, may be abandoned according to the procedures in this Section and pursuant to Art. 2.B, Public Hearing Processes. DOs, that are partially or fully implemented, or have not been implemented may be abandoned subject to the requirements of this Section. When considering an ABN application, the BCC and ZC shall consider the Standards indicated in Article 2.B.7.F.6. Standards.

a. Consistency with the Plan - The proposed abandonment is consistent with the Plan.

The proposed abandonment of the use is consistent with the Goals, Objectives and Policies of the Comprehensive Plan. The proposed development, being reviewed under a concurrent application, will be compliant with the requirements of the Plan. See Findings under the Development Order Amendment (DOA) for additional information.

b. Consistency with the Code - The proposed abandonment, is not in conflict with any portion of this Code, and is consistent with the stated purpose and intent of this Code. The abandonment of a DO does not create any new non-conformities.

The proposed abandonment is not in conflict with any portion of this Code, and is consistent with the stated purpose and intent of this Code. The abandonment of the DO does not create any non-conformities as the site is currently undeveloped. The proposed development will comply with all requirements of the ULDC to include but not limited to setbacks, building coverage, parking, landscaping and signage. See Findings under the Development Order Amendment (DOA) for additional information.

c. Adequate Public Facilities - The proposed abandonment of the DO shall not impact the approved requirements of Art. 2.F, Concurrency (Adequate Public Facility Standards)Art. 2.F, Concurrency (Adequate Public Facility Standards). When a non-implemented DO is abandoned, all concurrency affiliated with the DO is no longer valid. For implemented DOs, concurrency for the remainder of the non-affected area shall remain. Concurrency for any new uses on the subject property shall be subject to the requirements of Art. 2.F, Concurrency (Adequate Public Facility Standards).

The proposed abandonment of the DO will not impact the requirements of Art. 2.F, Concurrency (Adequate Public Facility Standards). The Applicant has requested and obtained Concurrency Approval for the proposed new DO.

- d. **Changed Conditions or Circumstances** - There are demonstrated changed site conditions or circumstances provided by the Applicant's Justification Statement that necessitate the abandonment. Abandonment of the Resolution approving the DO will not impact other DOs approved on the same site. There is no reliance by other parties for additional performances, or tasks to be implemented, that were required in the original DO.

The property received approval to construct a Type 1 Restaurant within Building B, however the development of the site has not commenced and now the proposed development for Building B will consist of Retail Sales, only. The Applicant states in their justification that the property owner no longer intends to develop the Type 1 Restaurant within Building B and has re-located that square footage to the Type 1 Restaurant within Building A.

FINDINGS:

Conditional Uses, Official Zoning Map Amendment to a PDD or TDD and Development Order Amendment:

When considering a Development Order application for a Rezoning to a PDD or a TDD, a Conditional Use, excluding Conditional Use requests for Density Bonus pursuant to Art. 5.G.1, Workforce Housing Program (WHF), or a Development Order Amendment, the BCC and ZC shall utilize the Standards a – h listed in Article 2.B.7.B, Standards. The Standards and Staff Analyses are indicated below. A Conditional Use, Rezoning to PDD or TDD, or Development Order Amendment that 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.*

○ *Relevant Comprehensive Plan Policies:* Multiple Future Land Use Element (FLUE) policies provide a framework for the implementation of mixed and multiple uses through design and configuration within a single MUPD, and set parameters for how to utilize the overall site for density and intensity purposes.

FLUE Policy 4.4.7-b: MUPD Design Objectives, items 3 and 4 identify interconnectivity and the encouragement of developing both residential and nonresidential uses within one MUPD. The subject site demonstrates the use of both pedestrian and vehicular connectivity while remaining separate but contiguous within the overall MUPD.

Additionally, in the FLUE Part III Regulation: Commercial, item 9 allows for "Mixed or multiple use planned developments may utilize up to 100% of the underlying residential density and the commercial intensity...". The overall MUPD utilizes both of the CH/5 Future Land Use Designations on the site.

Policy 4.3-g: Where appropriate, similar and/or complementary neighboring land uses shall employ access management techniques such as shared entrances (to reduce the number of curb cuts) and vehicular and/or pedestrian cross access between like development projects (to encourage inter-connectivity both within and between sites, and reduce the need to use the primary street system to access adjacent sites).

Policy 4.3-k: The County shall require, where feasible, that commercial land uses employ access management techniques, such as shared entrances and vehicular cross access, between adjacent existing and proposed commercial land uses.

The subject site incorporates multi-family residential and commercial uses and provides a transition between the two components by separating them both via Open Space, a dog park, a central drive isle and internal buffers. Additionally, the site provides several points of interconnectivity both internally and to the adjacent parcels on the east and west of the subject site.

○ *Intensity:* The maximum Floor Area Ratio (FAR) of 0.50 is allowed for non-residential uses utilizing the CH/5 FLUA designation in the Urban Suburban Tier (769,705 surveyed sq. ft. or 17.67 acres x 0.50 maximum FAR = 384,852 sq. ft. maximum). The request for a total of 31,559 sq. ft. equates to a FAR of approximately 0.04 (23,665 / 769,705 surveyed sq. ft. or 17.67 acres = 0.041). It should be noted that the residential uses do not count toward the FAR.

○ *Density & Workforce Housing Program (WHP):* The subject site has a prior approval for 212 residential units on the subject 17.67-acre site utilizing the underlying Medium Residential, 5 units per acre (MR-5) land use designation, which is the maximum permitted utilizing all Bonus Density programs as outlined below. The Property Owner provided the WHP obligation for 49 units and recorded the required Restrictive Covenant via

Orb. 31882 Page 658. Twenty Four were sent offsite to Haverhill Commons (DRO-2020-910 Orb. 31616 Pg. 1613) and the remaining 25 are provided onsite as a rental product.

The prior approval for a total of 212 units on the subject 17.67 acres, with the WHP program requirements in effect prior to the October 2019 changes, the MR-5 land use designation, utilizing the Full Incentive Development Option, was achieved as follows:

<u>Units per land use & WHP bonus:</u>	<u>Workforce Obligation:</u>
71 Standard units	3.55 WHP units (5%)
17 Max units	2.72 WHP units (16%)
53 WHP Bonus units (60%)	18.02 WHP units (34%)
<u>71 TDR's (4/ac)</u>	<u>24.85 WHP units (35%)</u>
212 total units	49.14 or 49 (rounded down)

○ *Special Overlay District/ Neighborhood Plan/Planning Study Area:* The site is not located within any neighborhood plans, overlays or plan study areas as identified in the Comprehensive Plan.

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:* The proposed development is subject to Table 3.E.3.D, MUPD Property Development Regulations (PDR). The property meets Code requirements per Table 3.E.3.D, MUPD Property Development Regulations for minimum lot dimensions. The site exceeds the minimum lot size of 5-acres (14.67-acres provided), 300 ft. of width (681 ft. provided), and 300 ft. of depth (973 ft. provided). Further, as the subject site is a PDD, it has previously been established to meet the minimum frontage requirements outlined in Art. 3.E.1.C.2.a.1., Minimum Frontage.

○ *Access/Frontage:* The proposed development continues to comply with frontage on Atlantic Avenue, with secondary access from Hagen Ranch Road. Vehicle and pedestrian access points to the site will be provided from Atlantic Avenue and Hagen Ranch Road. Additionally required cross access between the MUPD and adjacent commercial gas station to the east and Pod D-1 of the Villagio Isles PUD (Umberto Place) to the west, are provided at the northwest and northeast corners of the commercial portion of the site.

○ *Design Objectives and Performance Standards:* As the subject site zoned as an MUPD, the project is required to meet the Design Objectives and Performance Standards for a Planned Development District (per Art. 3.E.1.C) and Multiple Use Planned Development (per Art. 3.E.3.B). The Applicant has provided the necessary design features which includes: a continuous pedestrian system throughout the development connecting parking areas to the building; preservation of existing vegetation; screening of objectionable features; minimizing visual impacts; and, decorative paving to meet the intent of this section of the Code.

○ *Landscape/Buffering:* The proposed development will maintain existing Conditions of Approval for Buffering which will remain unchanged from the approved plan. The PSP (Figure 4) depicts the required 15-ft. wide Right of Way (R-O-W) Buffer along Hagen Ranch Road; the 20-ft. wide R-O-W Buffer with a 5-ft. Utility Easement (U.E.) along Atlantic Avenue; and, the 10-ft. wide R-O-W Buffer along Umberto Place.

Regarding Foundation Planting areas for the commercial buildings, the Applicant proposes to relocate the Foundation Planting areas required along the west side of commercial Building B to the north side of said buildings. The Applicant is requesting a Variance to relocate foundation planting as explained above.

○ *Architectural Review:* This use will be required to comply with the Architectural Guidelines specified in Article 5.C, Design Standards. No Architectural elevations have been provided at this time. The Applicant has indicated they intend to obtain Architectural review approval at time of application for Building Permits for the proposed structures.

○ *Parking/loading:* A total of 658 parking spaces are required and 677 are provided for the entire MUPD (+19). The residential portion requires a total of 457 required spaces, and the Applicant proposes 476. The Commercial portion requires a total of 201 required spaces per Article 6 of the ULDC, and the Applicant proposes 201.

○ *Signage:* The Preliminary Master Sign Plan (PMSP), Figure 8, indicates three freestanding signs along Hagen Ranch Road and two freestanding signs along Boynton Beach. The PMSP also indicates wall signage for the Commercial structures. All proposed signage is consistent with Art. 8, Signage, as well as the Technical Manual Requirements outlined in Title 5, Signage.

c. Compatibility with Surrounding Uses – *The proposed use or amendment is compatible and generally consistent with the uses and character of the land surrounding and in the vicinity of the land proposed for development.*

The subject site was previously approved for an MUPD. It is located at the major intersection of Hagen Ranch Road and Atlantic Avenue which is already developed with commercial developments at the other corners. To the north and east of the subject site are residential properties in the Villagio Isles PUD. This site layout design will allow for transition between the existing homes and the proposed commercial portion of the MUPD. Further, the Applicant proposes to retain the previously approved 6-ft. high wall and 10-ft. wide landscape Buffer on the exterior side of that wall that exist between the MUPD and the Multi-family units of Pods A and E of the Villagio Isles PUD, which is above and beyond Code requirements and took into account the approved intense commercial uses.

Internally, the PSP proposes a 15-ft. Incompatibility Buffer and a gated entrance between the residential and the commercial portions of the development. The commercial portion of the MUPD will be adjacent to existing commercial development to the east, and will be separated from the existing residential developments to the south and west of the site by existing roadways (Atlantic Avenue and Umberto Place); and, by existing buffering for those developments and the proposed R-O-W Buffers for the subject site.

The proposed modifications and increase in square footage is generally consistent with the uses and character of the area. The Site Plan indicates increased buffers on the north and east where adjacent to the residential. The site was previously approved for commercial uses and will provide services to the neighboring residential developments.

- 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.*

This previously approved commercial portion of the MUPD will be adjacent to a compatible commercial development to the east. To the south and west, Atlantic Avenue and Umberto Place roads will provide physical separation between the proposed development and the existing residential developments. Further, the commercial portion of the MUPD, comprised of two one-story buildings with Retail Sales and Type 1 Restaurant with Drive-through uses, will be located to the south of the site, away from existing abutting residential development. For these reasons, Staff has determined that the redesign of the development minimizes adverse effects on adjacent properties.

- e. Design Minimizes Environmental Impact** – *The proposed use and design minimizes environmental impacts, including, but not limited to, water, air, stormwater management, wildlife, vegetation, wetlands and the natural functioning of the environment.*

VEGETATION PROTECTION: The property is presently under development.

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 use or amendment will result in a logical, orderly and timely development pattern.*

The proposed request will remain consistent with the development pattern in the area. The established patterns of development that surround the site is composed of a mix of established residential and commercially zoned properties. The subject site is surrounded by the Villagio Isles PUD along the north and west property lines. Abutting the south and east of the development, there is a Professional Office development and a Chevron Gas Station with a vacant commercial tract located at the northwest corner of Atlantic Avenue and Hagen Ranch Road. To the east of the site, and across Hagen Ranch Road, is the Villages of Oriole Shops development. To the south and across Atlantic Avenue, is the Eagle Point residential subdivision, and to the southeast, is the Gleneagles PUD. Further west, between the site and the Florida's Turnpike, is the Atlantic Commons shopping center on the north side of Atlantic Avenue. On the south side of Atlantic Avenue, is the Lexington Club residential development; the Sonata Congregate Living Facility; and the Waterways residential development. The Applicant proposes to provide additional retail square footage to further accommodate the approved multi-use development. The proposed modifications increases to building square footage and modification to the location of the buildings. The Applicant's request to allow such modifications will remain a logical and orderly development pattern.

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

ENGINEERING COMMENTS:

This mixed use project was previously approved. The current proposal is a modification to the site plan by increase in approved retail space and decrease in approved fast-food restaurant with drive-through space. The revised project is expected to generate 3,280 net daily, 171 net AM peak hour, and 255 net PM peak hour trips. The revised plan of development results in a decrease in the AM peak hour trips but 5% increase in the PM peak hour trips. The buildout of the project is expected to happen by 2026.

Widening of Atlantic Ave and intersection improvements at Atlantic Ave and Hagen Ranch Rd intersection are required to meet the Traffic Performance Standards, even without the proposed project traffic. FDOT has plans to widen Atlantic Ave from SR-7 to Lyons Rd in 2024 and the County has plans to improve the intersection of Atlantic Ave and Hagen Ranch Rd.

ADJACENT ROADWAY LEVEL OF SERVICE (PM PEAK)

Segment: Atlantic Ave from Turnpike to Hagen Ranch Rd

Existing count: Eastbound=1822, Westbound=1803

Background growth: Eastbound=290, Westbound=254

Project Trips: Eastbound=48, Westbound=41

Total Traffic: Eastbound=2160, Westbound=2098

Present laneage: 2 in each direction

Assured laneage: 2 in each direction

LOS “D” capacity: 1770 per direction

Projected level of service: Worse than LOS D in both directions

Segment: Hagen Ranch Rd from Atlantic Ave to Lake Ida Rd

Existing count: Northbound=732, Southbound=766

Background growth: Northbound=158, Southbound=131

Project Trips: Northbound=53, Southbound=62

Total Traffic: Northbound=943, Southbound=959

Present laneage: 2 in each direction

Assured laneage: 2 in each direction

LOS “D” capacity: 1,770 per direction

Projected level of service: Better than LOS D in both directions

PALM BEACH COUNTY HEALTH DEPARTMENT:

This project has met the requirements of the Florida Department of Health.

FIRE PROTECTION:

Staff has reviewed this application and have no comment.

SCHOOL IMPACTS:

The School Board has no comment, as these requests affect the non-residential portion of the site.

PARKS AND RECREATION:

The application request is affecting the non-residential portion of the development. The Residential portion still complies with the requirements for Parks and Recreation.

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

The Applicant proposes to change the approved development currently approved for commercial uses, in order to modify Buildings A and B. The Applicant is also proposing an abandonment of the Class A Conditional Use for the Type I Restaurant with Drive-through at Building B, the proposed Retail Sales, intended to replace the restaurant, has a lesser impact than the previously approved restaurant, and can provide services that are needed by residents of the residential pod on the site as well as other nearby communities. The Applicant states that the proposed change to the last approval is required to accommodate a new grocery store retail tenant in Building B. Overall, there are demonstrated changed circumstances that necessitate the proposed amendment.

CONCLUSION: Staff has evaluated the standards listed under Article 2.B.2.B and determined that there is a balance between the need for change and the potential impacts generated by this change. Therefore, Staff is recommending approval of the requests. Staff has also determined that any of the potential impact and incompatibility issues will be adequately addressed subject to the recommended Conditions of Approval as indicated in Exhibits C-1 and C-3.

CONDITIONS OF APPROVAL

EXHIBIT C-1 Type 2 Variance - Concurrent

ALL PETITIONS

1. The approved Preliminary Site Plan is dated March 11, 2022. 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 Zoning Commission. (ONGOING: ZONING - Zoning)

VARIANCE

1. Prior to the submittal for Final Approval by the Development Review Officer, the approved Variance(s) and any associated Conditions of Approval shall be shown on the Final Site Plan. (DRO/ONGOING: ZONING - Zoning)

2. This Variance is approved based on the layout as shown on the Preliminary Site Plan dated March 11, 2022. Only minor modifications by Board of County Commissioners or Development Review Officer shall be permitted provided the changes are consistent with this Preliminary Site Plan. (ONGOING: ZONING - 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 Zoning Commission for review under the compliance Condition of this Approval. (ONGOING: ZONING - 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: ZONING - Zoning)

EXHIBIT C-2 Development Order Amendment

ALL PETITIONS

1. Previous ALL PETITIONS Condition 1 of Resolution R-2020-188, Control No.2004-00457, which currently states:

All previous Conditions of Approval applicable to the subject property, as contained in Resolution R-2011-0223 (Control 2004-457), 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 or Zoning Commission, unless expressly modified.

Is hereby amended to read:

All previous Conditions of Approval applicable to the subject property, as contained in Resolution R-2020-0188 (Control 2004-457), 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 or Zoning Commission, unless expressly modified. (ONGOING: MONITORING - Zoning)

2. Previous ALL PETITIONS Condition 2 of Resolution R-2020-188, Control No.2004-00457, which currently states:

The approved Preliminary Site Plan is dated December 23, 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 March 11, 2022. 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)

ENGINEERING

1. The Developer shall be restricted to the following phasing schedule:

a. No Building Permits shall be issued until the construction commences for intersection improvements at West Atlantic Avenue and Jog Road. Intersection improvements shall be as follows:

- exclusive right turn lane north approach

- exclusive right turn lane south approach

-second right turn lane west approach (BLDGPMT: MONITORING - Engineering) [Note: COMPLETED]

b. No Building Permits shall be issued until the construction commences for the widening of West Atlantic Avenue as a 4 lane facility from Starkey Road to Lyons Road. (BLDGPMT: MONITORING - Engineering) [Note: COMPLETED]

c. No Building Permits shall be issued until the contract has been let for the construction of West Atlantic Avenue as a 4 lane facility from Starkey Road to the Florida Turnpike. (BLDGPMT: MONITORING - Engineering) [Note: COMPLETED]

d. Building permits for more than 110,000 square feet of commercial building area shall not be issued until the contract has been let for the six (6) lane widening of Jog Road from Lake Ida Road to West Atlantic Avenue. (BLDGPMT: MONITORING - Engineering) [Note: COMPLETED]

e. Construction commences is defined as awarding the contract for the construction of the required improvements, the acquisition of all right of way and construction easements and the acquisition of all required permits. (ONGOING: ENGINEERING - Eng) [Note: COMPLETED per Atlantic Avenue Agreement] (ONGOING: ENGINEERING - Engineering) [Note: COMPLETED]

f. No Building Permits for the site shall be issued after December 31, 2015. 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 Article 2.E of the Unified Land Development Code. (DATE: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 1 of Resolution R-2020-188, Control No.2004-00457)

2. Acceptable surety required for the West Atlantic Avenue improvements identified in Condition No. E.1.a and E.1.b above shall be posted with the Office of the Land Development Division on or before May 27, 2006. Surety shall be in the amount of 110% of a Certified Cost Estimate provided by the Property Owner's Engineer and approved by the County Engineer. This surety may be required to be adjusted within 30 days notification from the County Engineer. This revision shall be based upon an updated cost estimate prepared by the Roadway Production Division at the time the final construction plans are completed. (DATE: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 2 of Resolution R-2020-188, Control No.2004-00457)

3. The concurrency approval is subject to the project aggregation rule set forth in the Traffic Performance Standards Ordinance. (ONGOING: ENGINEERING - Engineering) (Previous ENGINEERING Condition 3 of Resolution R-2020-188, Control No.2004-00457)

4. Prior to September 15, 2006, the Property Owner shall complete construction plans for the West Atlantic Avenue improvements identified in Condition No. E.1a and E.1b above. These construction plans shall be approved by the Florida Department of Transportation. All canal crossings (bridges and/or culverts) within the project limits shall be constructed to their ultimate paved configuration. (DATE: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 4 of Resolution R-2020-188, Control No.2004-00457)

5. Prior to May 15, 2007, the Property Owner shall complete construction of the West Atlantic Avenue improvements identified in Condition No. E.1a and E.1b above. All canal crossings (bridges and/or culverts) within the project limits shall be constructed to their ultimate paved configuration. (DATE: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 5 of Resolution R-2020-188, Control No.2004-00457)

6. CORRIDOR CONVEYANCE OF ROAD RIGHT OF WAY

The Property Owner shall convey to Palm Beach County Land Development Division by road right of way warranty deed for West Atlantic Avenue 120 feet north of the existing south right of way line.

Right of way shall be dedicated prior to June 1, 2006. All Right of way conveyances shall be free of all encumbrances and encroachments. Developer shall provide Palm Beach County with sufficient documentation acceptable to the Right of Way Acquisition Section to ensure that the property is free of all encumbrances and encroachments. The Grantor also agrees to provide Palm Beach County an environmental report, subject to the approval of County Engineer, demonstrating that this property meets all appropriate and applicable environmental agency requirements. In the event the report makes a determination of contamination which requires remediation or clean up on the property now owned by the Grantor, the Grantor agrees to hold the Grantee 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 prior to dedication. 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 provisions for Expanded Intersection Details and "Corner Clips." (DATE: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 6 of Resolution R-2020-188, Control No.2004-00457)

7. Prior to the issuance of the first building permit, the Property Owner shall provide to Palm Beach County Right of Way Section of Roadway Production Division by warranty deed additional rights of way for the construction of a right turn lanes on:

- i. West Atlantic Avenue at the project's entrance road,
- ii. Hagen Ranch Road and the project's entrance, with right of way dedication extending along the entire length of frontage on Hagen Ranch Rd.

These rights 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. (BLDGPM: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 7 of Resolution R-2020-188, Control No.2004-00457)

8. The Property owner shall construct:

- i. Right turn lane north approach on Hagen Ranch Road at the Project's Entrance Road.
- ii. A full median opening on Hagen Ranch Rd at the Project's Entrance Road, with a north approach and a south approach left turn lanes, as approved by the County Engineer. This median modification will require coordination with the Property Owners on the east side to modify their driveway approach pavement marking and signing accordingly. Documentation of such coordination must be provided by the Property Owner.
- iii. Right turn lane east approach on West Atlantic Avenue at the Project's Entrance Road.

iv. Left turn lane and associated restricted median improvements (left in only) on the west approach of West Atlantic Avenue at the Project's Entrance Road.

a. Construction shall be concurrent with the paving and drainage improvements for the site. Any and all costs associated with this 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. Permits required by: - Palm Beach County for items i, and - Florida Department of Transportation for items iii and iv shall be obtained prior to the issuance of the first Building Permit. (BLDGPMPT: MONITORING - Engineering) [Note: COMPLETED]

b. Permits required by Palm Beach County for item ii shall be obtained prior to the issuance of building permits for 129 units, equivalent to 3 buildings. (BLDGPMPT: MONITORING - Engineering) [Note: COMPLETED]

c. Construction of the turn lane and median improvements in i - iv above shall be completed prior to the issuance of the first Certificate of Occupancy. (CO: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 8 of Resolution R-2020-188, Control No.2004-00457)

9. On or before April 29, 2013, the Property Owner shall convey to Palm Beach County sufficient road drainage easement(s) through the project's internal drainage system, as required by and approved by the County Engineer, to provide legal positive outfall for runoff from those segments of West Atlantic Avenue along the property frontage; and up to a maximum of an additional 800 feet of West Atlantic Avenue frontage. The limits of this additional 800 feet of drainage shall be determined by the County Engineer. At his discretion, the County Engineer may accept equivalent drainage capacity on offsite property subject to drainage easements. Required easements shall be no less than 20 feet in width. Portions of such system not included within roadways or waterways dedicated for drainage purposes will be specifically encumbered by said minimum 20-foot drainage easement from the point of origin, to the point of legal positive outfall. The drainage system within the project shall have sufficient retention/detention, Compensating storage within this projects retention system as required by all permitting agencies, and conveyance capacity to meet the storm water discharge and treatment requirements of Palm Beach County and the applicable Drainage District, as well as the South Florida Water Management District, for the combined runoff from the project to accommodate the ultimate Thoroughfare Plan Road Section(s) of the included segment. If required and approved by the County Engineer the Property Owner shall construct within the proposed drainage easements a minimum of 24 inch closed piping system and appropriate wingwall or other structures as required by and approved by the County Engineer. Elevation and location of the entire drainage system shall be approved by the County Engineer. Any and all excess fill material from excavation by Palm Beach County within said easements shall become the property of Palm Beach County, which at its discretion may use this fill material. (DATE: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 9 of Resolution R-2020-188, Control No.2004-00457)

10. LANDSCAPE WITHIN THE MEDIAN OF WEST ATLANTIC AVENUE

a. The petitioner shall design, install and perpetually maintain the median landscaping within the median of all abutting right of way of West Atlantic Avenue. This landscaping and irrigation shall strictly conform to the specifications and standards for the County's Only Trees, Irrigation, and Sod (OTIS) program. Additional landscaping beyond OTIS requires Board of County Commissioners approval. Median landscaping installed by petitioner shall be perpetually maintained by the petitioner, his successors and assigns, without recourse to Palm Beach County, unless petitioner provides payment for maintenance as set forth in Paragraph d below. a) The necessary permit(s) for this landscaping and irrigation shall be applied for prior to the issuance of the first building permit. (BLDG PERMIT: MONITORING-Eng)

b. All installation of the landscaping and irrigation shall be completed prior to the issuance of the first certificate of occupancy. (CO: MONITORING -Eng)

c. At petitioner's option, when and if the County is ready to install OTIS on the surrounding medians of this roadway adjacent to the petitioner installed landscaping, payment for the maintenance may be provided to the County. The payment shall be in the amount and manner that complies with the schedule for such payments that exists on the date payment is made. Once payment has been provided, Palm Beach County shall assume the maintenance responsibility for the OTIS landscaping and irrigation that has been installed by the petitioner. The petitioner shall first be required to correct any deficiencies in the landscaping and irrigation. This option is not available to medians with additional landscaping beyond OTIS standards, unless those medians are first brought into conformance with OTIS standards by the Petitioner. (ONGOING-ENG-Eng)

d. Also, prior to the issuance of a Building Permit, and at the option of the petitioner, the petitioner may make a contribution to the County's Only Trees Irrigation and Sod, OTIS program, unincorporated thoroughfare beatification program. This payment, for the County's installation of landscaping and irrigation on qualifying thoroughfares shall be based on the project's front footage along West Atlantic Avenue. This payment shall be in the amount and manner that complies with the schedule for such payments as it currently exists or as it may from time to time be amended. (ONGOING: ENGINEERING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 10 of Resolution R-2020-188, Control No.2004-00457)

11. Previous ENGINEERING Condition 11 of Resolution R-2020-188, Control No.2004-00457, which currently states:

TEMPORARY ROADWAY CONSTRUCTION EASEMENT

Within ninety (90) days of a request from the County Engineer, the Property Owner shall convey a temporary roadway construction easement along West Atlantic Avenue to Palm Beach County. Construction by the applicant within this easement shall conform to all Palm Beach County Standards and Codes. The location, legal sketches and the dedication documents shall be approved by the County Engineer prior to final acceptance.

Is hereby amended to read:

Within ninety (90) days notice by the County Engineer, the Property Owner shall provide a roadway construction easement to Palm Beach County along Hagen Ranch Road, a minimum of 10 feet in width, or as otherwise approved by the County Engineer. This roadway construction easement shall also contain an isosceles trapezoid connecting the Corner Clips across this Property Owner's entrance. The Property Owner shall not record these required easements or related documents. After final acceptance of the location, legal sketches and dedication documents, Palm Beach County shall record all appropriate deeds and documents. (ONGOING: MONITORING - Engineering)

12. Condition deleted in R-2020-0188. (ONGOING: ENGINEERING - Engineering) (Previous ENGINEERING Condition 12 of Resolution R-2020-188, Control No.2004-00457)

13. Prior to Final Site Plan approval by the DRO, the Property Owner shall revise the access easement for the adjacent PUD to locations that do not conflict with proposed buildings. (DRO: ENGINEERING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 13 of Resolution R-2020-188, Control No.2004-00457)

14. Prior to the issuance of the first building permit, the Property Owner shall configure the property into legal lots of record in accordance with provisions of Article 11 of the Unified Land Development Code or as otherwise approved by the County Engineer. (BLDGPM: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 14 of Resolution R-2020-188, Control No.2004-00457)

15. Previous ENGINEERING Condition 15 of Resolution R-2020-188, Control No.2004-00457, which currently states:

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, or as amended. 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)

Is hereby amended to read:

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, 2026, or as amended. 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)

ENVIRONMENTAL

1. A Phase I Environmental Audit shall be submitted to the Department of Environmental Resources Management prior to the approval of the Site Plan by the Development Review Officer. (DRO: ENVIRONMENTAL RESOURCES MANAGEMENT - Environmental Resources Management) [Note: COMPLETED] (Previous ENVIRONMENTAL Condition 1 of Resolution R-2020-188, Control No.2004-00457)

HEALTH

1. Owners and operators of facilities generating hazardous, toxic, or industrial wastes shall not deposit or cause to be deposited any such wastes into the sanitary sewer system unless adequate pretreatment facilities approved by the Florida Department of Environmental Protection (FDEP) the Palm Beach County Health Department and the agency responsible for sewerage works is used. (ONGOING: HEALTH DEPARTMENT - Health Department) (Previous HEALTH Condition 1 of Resolution R-2020-188, Control No.2004-00457)

LANDSCAPE - GENERAL-INCOMPATIBILITY BUFFER IN-BETWEEN RESIDENTIAL AND COMMERCIAL

1. Previous LANDSCAPE - GENERAL Condition 4 of Resolution R-2020-188, Control No.2004-00457, which currently states:

A minimum fifteen (15) foot wide Incompatibility buffer shall be provided along the entire south side of the residential portion of the MUPD, abutting the commercial portion of the development. In addition to the fifteen (15) foot wide Incompatibility buffer, open space shall be provided as generally depicted in the Preliminary Site Plan dated December 23, 2019, to ensure that spatial separation is maintained between the residential and commercial portions of the development.

Is hereby amended to read:

A minimum fifteen (15) foot wide Incompatibility buffer shall be provided along the entire south side of the residential portion of the MUPD, abutting the commercial portion of the development. In addition to the fifteen (15) foot wide Incompatibility buffer, open space shall be provided as generally depicted in the Preliminary Site Plan dated January 24, 2022, to ensure that spatial separation is maintained between the residential and commercial portions of the development.

LANDSCAPE - PERIMETER-PERIMETER BUFFERS ALONG THE NORTH AND WEST PROPERTY LINES OF THE RESIDENTIAL PORTION OF THE MUPD

2. Buffers along the north and west property lines of the residential portion of the MUPD shall include:

- a. a minimum twenty (20) width;
- b. a three (3) foot continuous berm. The berm height shall be measured from the nearest top of curb, crown of the adjacent street or the nearest finished floor elevation, whichever is higher;
- c. a six (6) foot high concrete wall located at the plateau of the berm.
- d. one (1) canopy tree per each thirty (30) linear feet of property line, with a maximum spacing of sixty (60) feet between clusters. Seventy-five (75) percent of the trees shall be planted on the exterior side of the wall;
- e. one (1) palm or pine per each thirty (30) linear feet of property line, with a maximum spacing of sixty (60) feet between clusters. Seventy-five (75) percent of the trees shall be planted on the exterior side of the wall;
- f. one (1) medium shrub per each four (4) linear feet of property line. Shrubs shall be planted on both sides of the wall; and,
- g. one (1) small shrub per each two (2) linear feet of property line. Shrubs shall be planted on both sides of the wall.
- h. open space shall be provided as generally depicted in the Preliminary Site Plan dated December 23, 2019, to ensure that spatial separation is maintained between the MUPD and Villagio Isles PUD. (BLDGPMT/ONGOING: ZONING - Zoning) (Previous LANDSCAPE - PERIMETER Condition 7 of Resolution R-2020-188, Control No.2004-00457)

3. At the time of Final Approval by the Development Review Officer, the fifteen (15) foot wide Buffers along the north and west property lines of the residential portion of the MUPD, as depicted in the Preliminary Site Plan dated December 23, 2019, shall be revised to a minimum width of twenty (20) feet. (DRO: ZONING - Zoning) [Note: COMPLETED] (Previous LANDSCAPE - PERIMETER Condition 8 of Resolution R-2020-188, Control No.2004-00457)

LANDSCAPE - INTERIOR-LANDSCAPING ALONG THE EAST AND WEST SIDE OF THE ATLANTIC AVENUE ACCESS WAY

4. Prior to Final Approval by the Development Review Officer, the Site Plan shall be revised to indicate that Royal Palms shall be planted along the east and west side of the Atlantic Avenue access way within the commercial portion of the MUPD, from the southern access point on Atlantic Avenue to the northern end of the commercial portion of the site. (DRO: ZONING - Zoning) (Previous LANDSCAPE - INTERIOR Condition 9 of Resolution R-2020-188, Control No.2004-00457)

PALM TRAN

1. Prior to final approval by the Development Review Officer (DRO), the Property Owner shall amend the Master Site Plan to indicate mass transit circulation, bus access, and/or bus stops on or adjacent to the subject property. (DRO: PALM-TRAN - Zoning) (Previous PALM TRAN Condition 1 of Resolution R-2020-188, Control No.2004-00457)

2. Prior to Plat Recordation or issuance of the first Building Permit, whichever shall first occur, the Property Owner shall convey and/or dedicate to Palm Beach County an easement for a Bus Stop Boarding and Alighting Area in a form with terms and conditions approved by Palm Tran. Supporting documentation, including but not limited to a location sketch, legal description, affidavit of ownership, attorney title opinion and other related documents as deemed necessary by Palm Tran is required. (PLAT: ENGINEERING - Palm-Tran) (Previous PALM TRAN Condition 2 of Resolution R-2020-188, Control No.2004-00457)

PARKS

1. No more Certificates of Occupancy than those allowed below for the residential units shall be issued for the phase until the recreational improvements have been completed in their entirety and open for use and accessible to the residents.

Phasing Plan shows that NO improvements are required prior to CO for Building #1.

A tot lot or Dog park must be completed prior to CO for Building #2. (CO: MONITORING - Parks and Recreation) [Note: COMPLETED] (Previous PARKS Condition 1 of Resolution R-2020-188, Control No.2004-00457)

PLANNING

1. 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. These units are to be distributed among the categories (low, moderate 1, moderate 2, and middle) consistent with the requirements in ULDC Article 5.G. 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. (BLDGPMT: MONITORING - Planning) [Note: COMPLETED] (Previous PLANNING Condition 9 of Resolution R-2020-188, Control No.2004-00457)

2. On an annual basis, beginning January 2, 2023, 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 provided by the County, an annual report containing information and documentation to demonstrate continued compliance with the WHP and a copy of any monitoring information provided to and received from the appropriate funding agency/source. (DATE/ONGOING: MONITORING - Planning) (Previous PLANNING Condition 10 of Resolution R-2020-188, Control No.2004-00457)

3. Prior to Final approval by the Development Review Officer (DRO), the applicant shall submit a recorded cross access easement agreement, with prior approval by the County Attorney, for the cross access points identified on the nonresidential portion of the site plan. (DRO: PLANNING - Planning) (Previous PLANNING Condition 11 of Resolution R-2020-188, Control No.2004-00457)

4. Prior to the release of the first Certificate of Occupancy for the non-residential portion (Comm), construct, and pave to the property line, the cross access as shown on the site plan. (CO: MONITORING - Planning) (Previous PLANNING Condition 12 of Resolution R-2020-188, Control No.2004-00457)

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-2020-188, Control No.2004-00457)

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) (Previous SCHOOL BOARD Condition 2 of Resolution R-2020-188, Control No.2004-00457)

SIGNS

1. The number of freestanding signs shall be limited to a maximum of two (2) signs; and three (3) main entrance signs. (BLDGPMT/ONGOING: BUILDING DIVISION - Zoning) (Previous SIGNS Condition 1 of Resolution R-2020-188, Control No.2004-00457)

UTILITIES

1. If any relocations/modifications to the County's existing facilities are required that are a direct or indirect result of the development, the developer/property owner shall pay for the complete design and construction costs associated with these relocations/modifications. (ONGOING: PBC WATER UTILITIES - PBC Water Utilities) [Note: COMPLETED] (Previous UTILITIES Condition 1 of Resolution R-2020-188, Control No.2004-00457)

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: ZONING - 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.

EXHIBIT C-3 Development Order Amendment (Type 1 Restaurant Building B)

ALL PETITIONS-TYPE 1 RESTAURANT WITH A DRIVE-THROUGH (BUILDING B)

1. Previous ALL PETITIONS Condition 1 of Resolution R-2020-190, Control No.2004-00457, which currently states:

The approved Preliminary Site Plan is dated December 23, 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 March 11, 2022. 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. (ONGOING: ZONING - Zoning)

COMPLIANCE-TYPE 1 RESTAURANT WITH A DRIVE-THROUGH (BUILDING B)

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: ZONING - 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: ZONING - 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

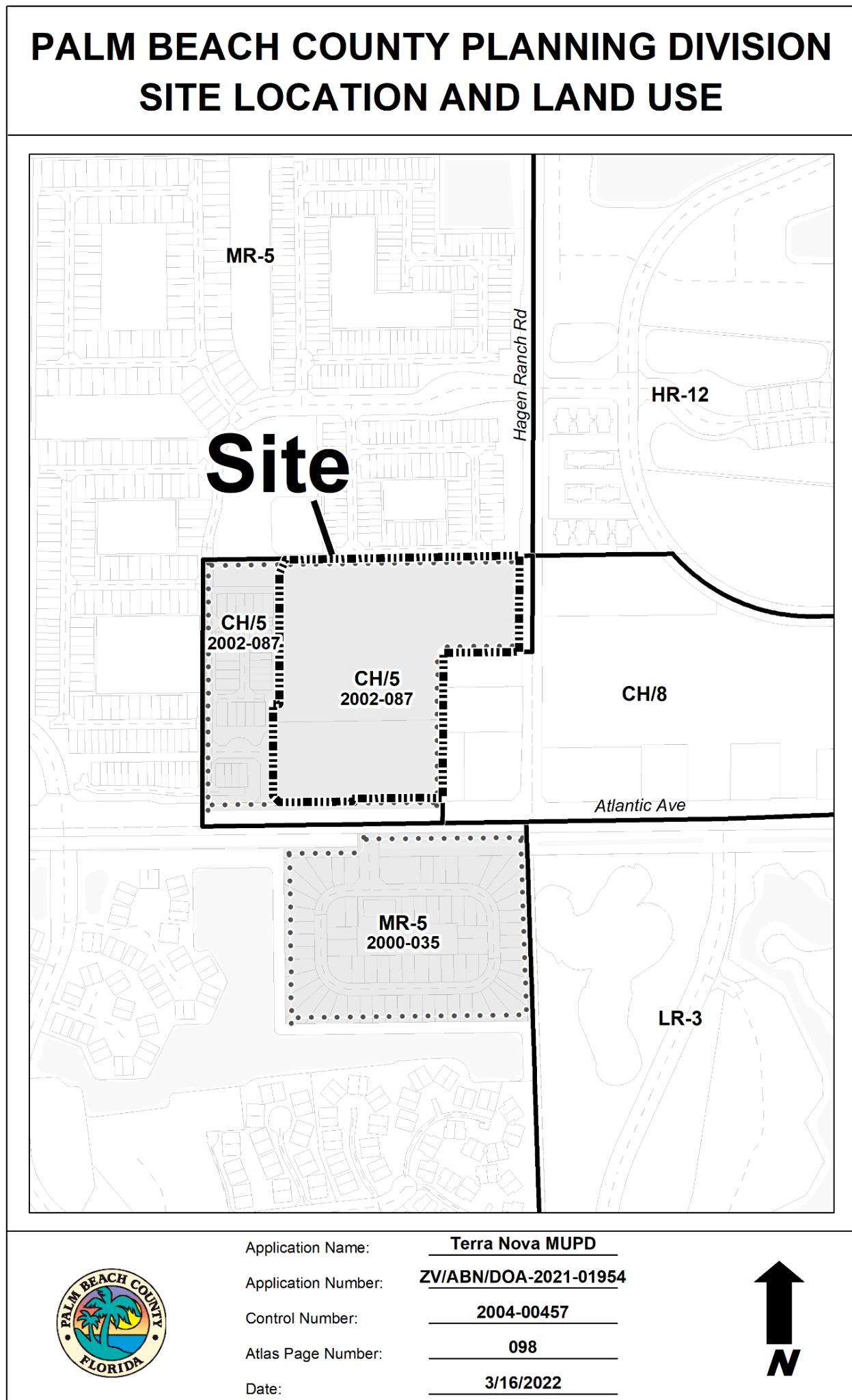


Figure 2 - Zoning Map

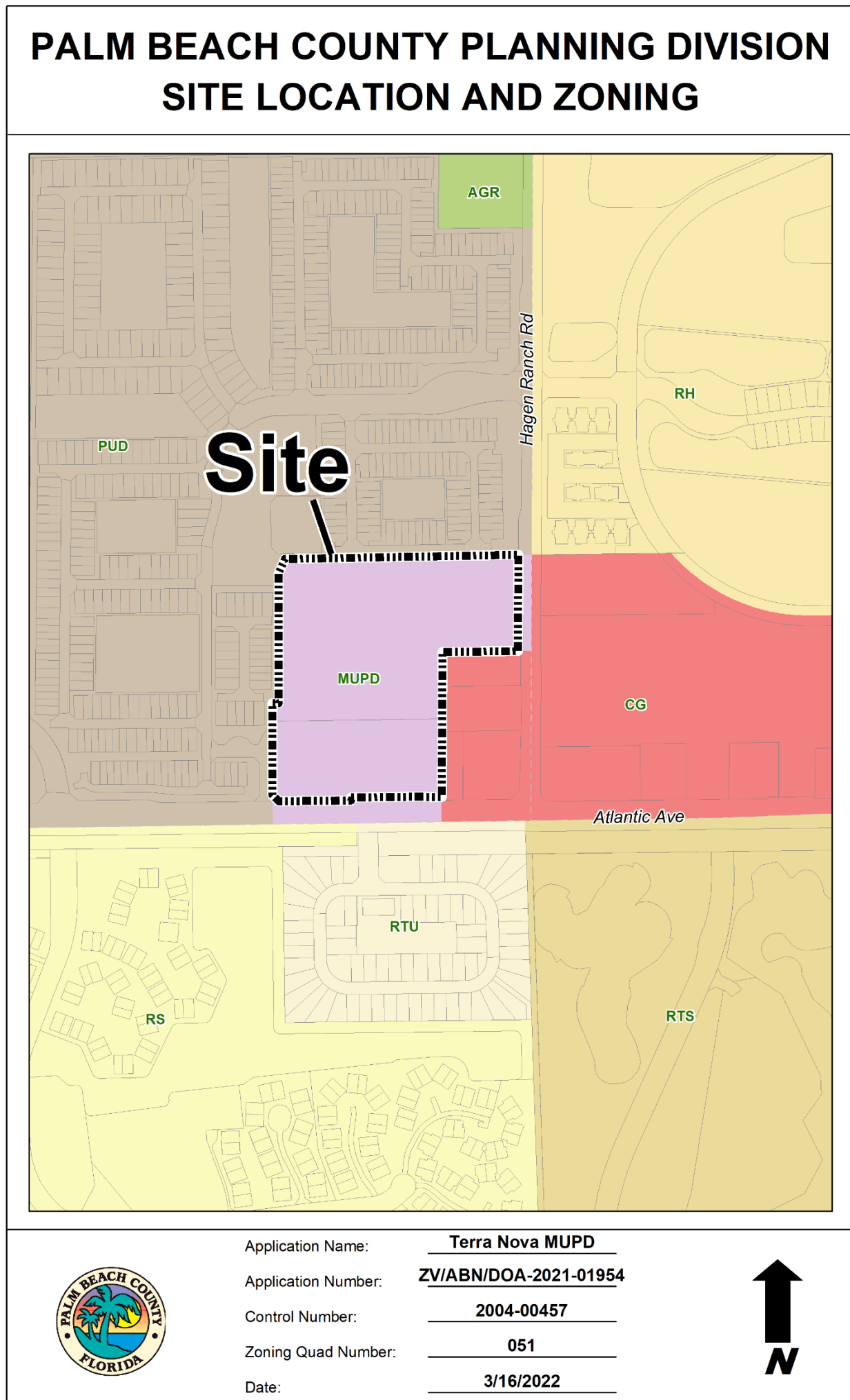
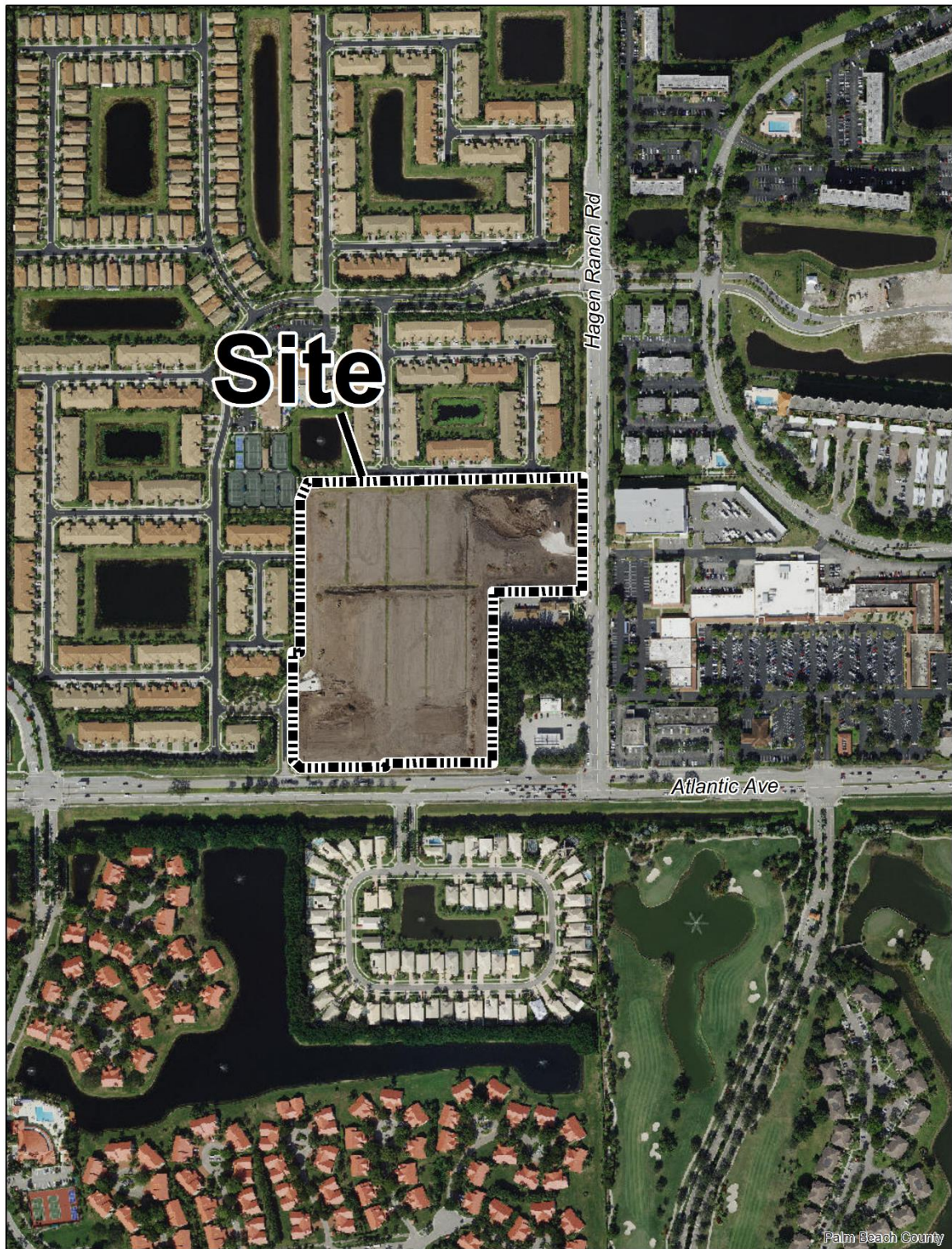


Figure 3 – Aerial

PALM BEACH COUNTY PLANNING DIVISION SITE LOCATION



Application Name:	<u>Terra Nova MUPD</u>
Application Number:	<u>ZV/ABN/DOA-2021-01954</u>
Control Number:	<u>2004-00457</u>
Atlas Page Number:	<u>098</u>
Date:	<u>3/16/2022</u>



Zoning Commission
Application No. ZV/ABN/DOA-2021-01954

© 2000 Blackwell Science Ltd *Journal of Internal Medicine* 247: 399–405

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 Charles M. Scardina JR., 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 [x] Title MGR _____ [position - e.g., president, partner, trustee] of Principal Commercial Group, 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: 7953 Boynton Beach Blvd, STE 220
Boynton Beach, FL 33437
- 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.



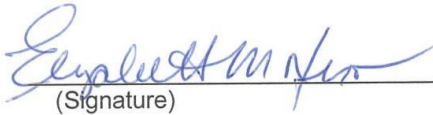
Charles M. Scardina JR. _____, Affiant
(Print Affiant Name)

NOTARY PUBLIC INFORMATION:

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

The foregoing instrument was acknowledged before me by means of [x] physical presence or [] online notarization, this 21st day of October, 2021 by Charles M. Scardina, Jr (name of person acknowledging). He/she is personally known to me or has produced _____ (type of identification) as identification and did not take an oath (circle correct response).

Elizabeth M Nero
(Name - type, stamp or print clearly)


(Signature)

My Commission Expires on: June 16, 2025



EXHIBIT “A”

PROPERTY

TRACTS A AND B OF TERRA NOVA MUPD, ACCORDING TO THE PLAT THEREOF, AS
RECORDED IN PLAT BOOK 131, PAGES 28 THROUGH 34, OF THE PUBLIC RECORDS OF
PALM BEACH COUNTY, FLORIDA.

SAID LANDS SITUATE IN SECTION 16, TOWNHSIP 46 SOUTH, RANGE 42, EAST, PALM BEACH
COUNTY, FLORIDA.

CONTAINING 760,551 SQUARE FEET / 17.4598 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
Charles M. Scardina SR.	- 7593 Boynton Beach Blvd. #220 Boynton Beach, FL 33437

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.



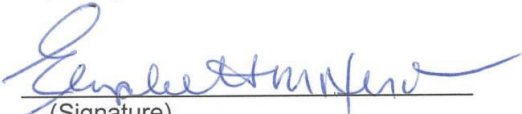
Charles M. Scardina JR. _____, Affiant
(Print Affiant Name)

NOTARY PUBLIC INFORMATION:

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of [x] physical presence or [] online notarization, this 21st day of October, 2021 by Charles M. Scardina, Jr (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).

Elizabeth M Nero
(Name - type, stamp or print clearly)


(Signature)

My Commission Expires on: June 16, 2025

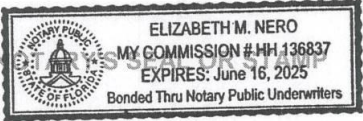


EXHIBIT “A”

PROPERTY

TRACTS A AND B OF TERRA NOVA MUPD, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 131, PAGES 28 THROUGH 34, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

SAID LANDS SITUATE IN SECTION 16, TOWNHSIP 46 SOUTH, RANGE 42, EAST, PALM BEACH COUNTY, FLORIDA.

CONTAINING 760,551 SQUARE FEET / 17.4598 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
Charles Scardina - Title MGR - 7593 Boynton Beach Blvd. STE 220, Boynton Beach, FL 33437	
Terranova Manager LLC - Title MGR - - 7593 Boynton Beach Blvd. STE 220, Boynton Beach, FL 33437	

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 Charles M. Scardina JR., 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 [x] Title MGR Terranova Manager, LLC [position - e.g., president, partner, trustee] of Principal Development Group, 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: 7953 Boynton Beach Blvd, STE 220
Boynton Beach, FL 33437
- 3. Attached hereto as Exhibit "B" is a complete listing of the names and addresses of every person or entity having a five percent or greater interest in the Property. Disclosure does not apply to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.
- 4. Affiant acknowledges that this Affidavit is given to comply with Palm Beach County policy, and will be relied upon by Palm Beach County in its review of application for Comprehensive Plan amendment or Development Order approval affecting the Property. Affiant further acknowledges that he or she is authorized to execute this Disclosure of Ownership Interests on behalf of any and all individuals or entities holding a five percent or greater interest in the Property.
- 5. Affiant further acknowledges that he or she shall by affidavit amend this disclosure to reflect any changes to ownership interests in the Property that may occur before the date of final public hearing on the application for Comprehensive Plan amendment or Development Order approval.
- 6. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

Exhibit E – Applicant’s Justification Statement dated February 22, 2022

JUSTIFICATION STATEMENT
Terra Nova MUPD
(FKA Terra Nova – Commercial; Villaggio Isles MUPD)
Application No. ZV/ABN/DOA-2021-01954 | Control No. 2004-00457
Initial Submittal: November 1, 2021
Resubmittal: January 24, 2021, February 22, 2022

REQUEST
On behalf of the Applicant, WGI is requesting approval of the following:

- 1) **Development Order Amendment** to reconfigure the Site Plan and modify commercial uses (R-2020-0188)
- 2) **Development Order Amendment** to reconfigure and relocate square footage of a Type 1 restaurant with drive through from Building B to Building A (R-2020-0189);
- 3) **Development Order Abandonment** to abandon R-2020-190 which allowed for a Type 1 restaurant with drive-through (Building B);
- 4) **Development Order Amendment** to amend the cross-access easement per O.R.B. 20708, PG 1430 as modified by O.R.B. 31731, PG 1392;
- 5) **Type 2 Variance** to reduce the landscaped median divider below the 10-foot requirement;
- 6) **Type 2 Variance** to increase relocation of foundation planting from 50% to 100%; and
- 7) **Type 1 Waiver** to allow for the decrease of planting depth.

SITE CHARACTERISTICS
The 17.6736 gross acre subject site, known as “Terra Nova MUPD”, is located on the northwest corner of Atlantic Avenue and Hagen Ranch Road in unincorporated Palm Beach County. The subject site retains a future land use (FLU) designation of CH/5 (Commercial High, with an underlying five units per acre) and a zoning district classification of MUPD (Multiple Use Planned Development). The site is identified by Parcel Control Number (PCN) 00-42-46-16-00-38-001-0000 and 00-42-46-16-00-38-002-0000 and is located at 7607 Atlantic Avenue.

DEVELOPMENT HISTORY
The analysis below shows the previous approvals related to the subject site:

RESOLUTION	DATE	SUMMARY	CONTROL NO. / APP. NO.	APP NO.
R-2005-2290	12/08/2005	Rezoning, from AR (Agricultural Residential) Zoning District to MUPD	2004-00457	PDD-2004-660
Control #2006-00100	08/09/2006	Final Site Plan approval to allow the development of 155,000 SF commercial buildings	2004-00457	
R-2011-0223	02/25/2011	Development Order Amendment to increase square footage, reconfigure the site plan, modify/delete conditions of approval, and restart the development clock in the MUPD Zoning District.	2004-00457	DOA-2010-02574
R- 2020-00188	2/27/2020	Development Order Amendment to reconfigure the Site Plan; modify and reduce commercial uses; add Multifamily Residential Use (212 units); modify access points; and, modify Conditions of Approval.	2004-00457	DOA/CA-2018-01690
R- 2020-00189	2/27/2020	Class A Conditional Use to allow a Type 1 restaurant with drive-through (Building A)	2004-00457	DOA/CA-2018-01690
R- 2020-00190	2/27/2020	Class A Conditional Use to allow a Type 1 restaurant with drive-through (Building B)	2004-00457	DOA/CA-2018-01690
R- 2020-00191	2/27/2020	Class A Conditional Use to allow a density bonus greater than 30 Percent through the Workforce Housing Program	2004-00457	DOA/CA-2018-01690
R- 2020-00192	2/27/2020	Class A Conditional Use to allow a Transfer of Development Rights	2004-00457	DOA/CA-2018-01690

Since the Site Plan was approved on July 24, 2020, there have been two ZAR amendments: ZAR-2021-01131 and ZAR-2021-01385. Both ZAR amendments were approved, which permitted changes to both the residential and



commercial portions of the approved development. Currently the multifamily residential portion is under construction, while the commercial portion remains vacant and to be developed.

SURROUNDING PROPERTIES

The surrounding uses vary and are found to be compatible with the proposed development. The following is a summary of the uses directly surrounding the subject site:

	FLU	ZONING DISTRICT	EXISTING USE
North	MR-5	PUD	Multi-Family Residential (Villaggio Isles Pod A)
South	MR-5	RTU	Single Family Residential (Eagle Point); Atlantic Avenue ROW
West	MR-5	PUD	Multi-Family Residential (Villaggio Isles Pod D)
	CH/5	PUD	Multi-Family Residential (Villaggio Isles Pod E)
East	CH/8	CG	Commercial/Retail (Chevron Gas Station; Villages of Oriole Plaza), Hagen Ranch Road ROW
	HR-12	RH	Villages of Oriole

- North:** Immediately north of the subject site is the multi-family residential development, known as Villaggio Isles Pod A, located within unincorporated Palm Beach County. The Villaggio Isles Pod A is an age-restricted townhome community that encompasses 83 dwelling units and retains a FLU designation of MR-5 and a Zoning designation of PUD.
- South:** Immediately south of the subject site is Atlantic Avenue right-of-way. Further south, are single-family residential developments, known as Eagle Point. This property consist of 67 dwelling units and retains FLU designation of MR-5 with a Zoning designation of RTU (Residential Transitional Urban District).
- West:** Immediately west of the subject site is the Villaggio Isles Pod E, a multi-family residential development within unincorporated Palm Beach County. This age-restricted townhome development encompasses of a total 25 dwelling units and retains a FLU designation of CH/5 and a Zoning designation PUD. Further west are the multi-family residential developments, known as Villaggio Isles Pod D, located within unincorporated Palm Beach County. The Villaggio Pod D consist of 150 age-restricted townhome units and retain a FLU designation of MR-5 with a Zoning designation of PUD.
- East:** Immediately east of the subject site is Hagen Ranch Road right-of-way and a 3,841 square foot Chevron Gas station which retains an unincorporated Palm Beach County FLU designation of CH/8 (Commercial High, with underlying HR-8) and a Zoning designation of CG (General Commercial). Further east is a commercial/retail plaza, known as Villages of Oriole Plaza. This 165,103 square foot plaza retains an unincorporated Palm Beach County FLU designation of CH/8 and a Zoning designation of CG. The multi-family residential development, known as The Villages of Oriole, consists of 3,742 dwelling units and retains a FLU designation of HR-12 and Zoning District of RH (Multi-family Residential High-Density District)



DEVELOPMENT PROGRAM

The approved development is comprised of a mix of both commercial and residential uses consistent with the purpose and intent of the MUPD zoning district classification. The Applicant intends to modify the commercial portion of the Site Plan only; no modifications are proposed for the multifamily portion of the development. Under the previous Development Order Amendment applications, the Site Plan on the commercial portion of the subject site showed a total of 23,665 square feet of commercial uses in two buildings, which included 17,890 sq. ft. of retail sales and 5,775 sq. ft. for two Type 1 Restaurants with drive-throughs. The Site Plan was amended later on through ZAR-2021-01131 and ZAR-2021-01385 to increase the total commercial square footage to 24,500 square feet.

Commercial Building A, with a Type 1 restaurant and retail uses, will remain, and commercial Building B will be replaced by a new 19,209 square foot grocery retail building. The Type 1 restaurant with a drive through use will be relocated from Building B to Building A. Vehicular circulation, parking, pedestrian connections, and landscape median dividers are modified on the eastern portion of the commercial development. The access points for the development are not proposed to be modified in this application. The proposed modifications to the commercial portion are detailed below:

Approved					
	Art. 4 Use classification	Approved Use	Square Footage	Parking	
				Required	Provided
	Retail	Retail	17,685 SF	99 spaces	208 spaces
	Type 1 Restaurant with drive through	Type 1 Restaurant with drive through	6,815 SF	88 spaces	
Total	-	-	24,500 SF	187 spaces	208 spaces

Proposed					
	Art. 4 Use classification	Proposed Use	Square Footage	Parking	
				Required	Provided
	Retail	Retail	27,559 SF	138 spaces	201 spaces
	Type 1 Restaurant with drive through	Type 1 Restaurant with drive through	4,600 SF (Including 600 SF of outdoor dining)	63 spaces	
Total	-	-	32,159 SF	201 spaces	201 spaces

DEVELOPMENT ORDER AMENDMENT – MUPD / CLASS A CONDITIONAL USE – TYPE 1 RESTAURANT WITH DRIVE THROUGH / CROSS ACCESS EASMENT

The standards for a Development Order Amendment request are set forth pursuant to the standards indicated in Art. 2.B.7.B.2, Standards, Conditional Uses and Rezoning to a PDD or TDD. This proposal meets the following requirements set forth in Section 2.B.1.B of the Palm Beach County Unified Land Development Code (ULDC) for Development Order Amendment approval.

1. 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.

Connectivity - Policy 4.4.7-b – MUPD Design Objectives, items 3 and 4 identify interconnectivity and the proposed modifications will continue to provide both pedestrian and vehicular connectivity while maintaining a secured separation for the residential portion from the commercial uses of the MUPD.

Intensity - Pursuant to Table 2.2-e.1 – Maximum Floor Area Ratios for Non-Residential FLU Categories and

Justification Statement
Terra Nova MUPD

February 22, 2022
Page | 3



Non- Residential Uses, the max. FAR of 0.5 is allowed for non-residential uses utilizing the CH/5 FLUA designation in the U/S Tier which equates to 384,852 sq. ft. (max.) The request to modify the Site Plan for a total of 32,159 square feet will still fall below the allowable max. FAR.

Density – Since these DOA modifications are only limited to the commercial portion of the MUPD; the approved density; the TDR and WHP still remain vested under the last approval.

The requests are consistent with the Purposes, Goals, Objectives and Policies of the County’s Comprehensive Plan as the proposed development is providing a well-integrated, livable community in the Urban/Suburban Tier.

2. **Consistency with the Code**

The proposed use or amendment is not in conflict with any portion of this Code and is consistent with the stated purpose and intent of this Code.

Approved					
	Art. 4 Use classification	Approved Use	Square Footage	Parking	
				Required	Provided
	Retail	Retail	17,685 SF	99 spaces	208 spaces
	Type 1 Restaurant with drive through	Type 1 Restaurant with drive through	6,815 SF	88 spaces	
Total	-	-	24,500 SF	187 spaces	208 spaces

Proposed					
	Art. 4 Use classification	Proposed Use	Square Footage	Parking	
				Required	Provided
	Retail	Retail	27,559 SF	138 spaces	201 spaces
	Type 1 Restaurant with drive through	Type 1 Restaurant with drive through	4,600 SF (Including 600 SF of outdoor dining)	63 spaces	
Total	-	-	32,159 SF	201 spaces	201 spaces

Buildings

Parking and Loading – The overall parking provided for the MUPD is 677 Spaces. The residential portion provides a total of 476 spaces for the residents/guests. The commercial portion would require a total of 201 spaces, and the applicant is proposing 201 spaces.

Setbacks

Pursuant to Table 3.E.2.D of the Palm Beach County Unified Land Development Code (ULDC), MUPD zoning district setbacks are measured from the inside edge of the landscape buffer. The proposed modification to the Site Plan still meets or exceeds the requirements in order to minimize any adverse effects on adjacent uses. The proposed modification to Building B within the commercial portion provides a side setback of 15 feet. A summary of the required and proposed setback distances are shown below:

Setback Requirements				
MUPD Zoning District	Setbacks/Separation			
	Front	Side	Side Street	Rear
Required	30'	C – 15' R – 30'	30'	C – 20' R – 30'
Proposed	114'	C - 15' R – 63'	63'	C – N/A' R – 30'



3. Compatibility with Surrounding Uses

The proposed use or amendment is compatible and generally consistent with the uses and character of the land surrounding and in the vicinity of the land proposed for development.

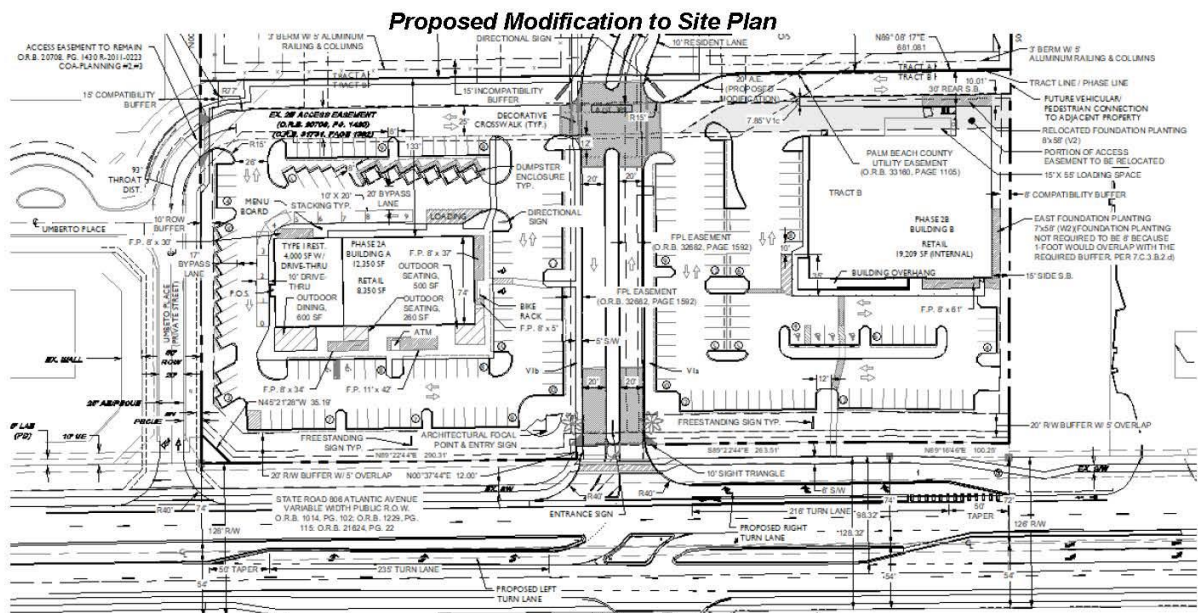
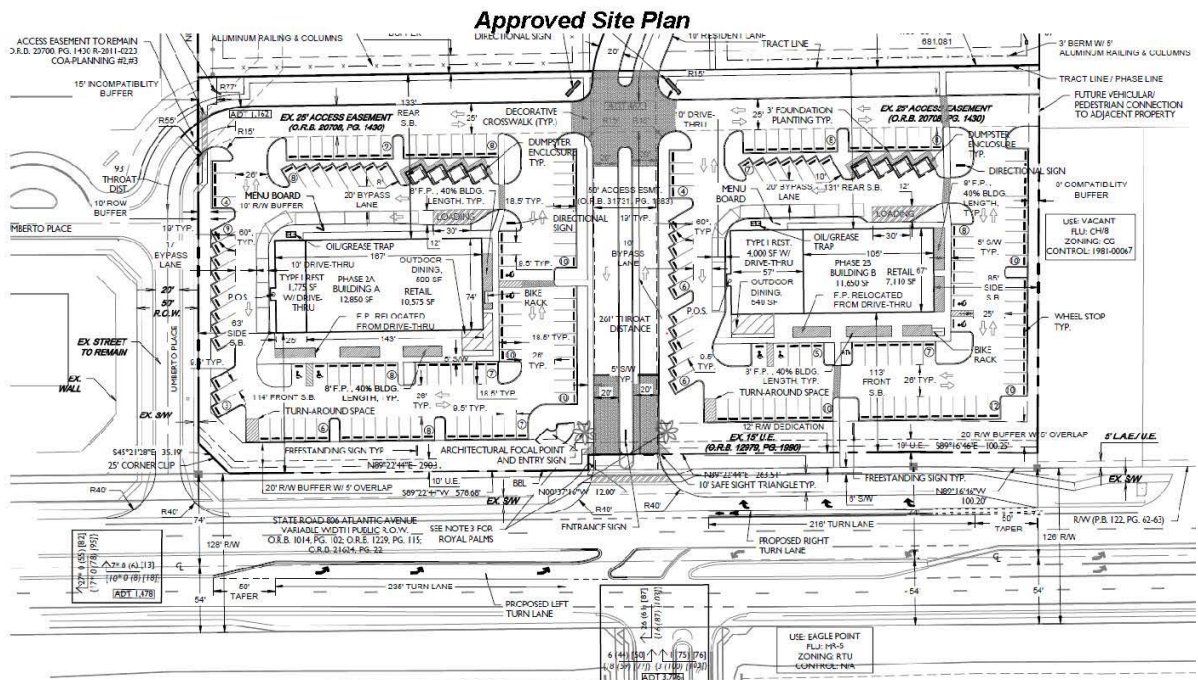
Below is an analysis of the proposed development’s compatibility with the surrounding uses:

- North:** Immediately north of the subject site is the multi-family residential development, known as Villaggio Isles Pod A, located within unincorporated Palm Beach County. The Villaggio Isles Pod A is an age-restricted townhome community that encompasses 83 dwelling units and retains a FLU designation of MR-5 and a Zoning designation of PUD. The residential portion of the development is not being modified in this DOA request. All landscape buffers and screening remains the same from the previous approved Site Plan.
- South:** Immediately south of the subject site is Atlantic Avenue right-of-way. Further south, are single-family residential developments, known as Eagle Point. This property consists of 67 dwelling units and retains FLU designation of MR-5 with a Zoning designation of RTU (Residential Transitional Urban District). The proposed development does not modify the 20-foot-wide ROW buffer along Atlantic Avenue from the previous approved Site Plan.
- West:** Immediately west of the subject site is the Villaggio Isles Pod E, a multi-family residential development within unincorporated Palm Beach County. This age-restricted townhome development encompasses of a total 25 dwelling units and retains a FLU designation of CH/5 and a Zoning designation PUD. Further west are the multi-family residential developments, known as Villaggio Isles Pod D, located within unincorporated Palm Beach County. The Villaggio Pod D consist of 150 age-restricted townhome units and retain a FLU designation of MR-5 with a Zoning designation of PUD. The proposed development provides a 10-foot-wide R-O-W buffer along the western property line abutting Umberto Place, which is not modified from the previous approved Site Plan.
- East:** Immediately east of the subject site is Hagen Ranch Road right-of-way and a 3,841 square foot Chevron Gas station which retains an unincorporated Palm Beach County FLU designation of CH/8 (Commercial High, with underlying HR-8) and a Zoning designation of CG (General Commercial). Further east is a commercial/retail plaza, known as Villages of Oriole Plaza. This 165,103 square foot plaza retains an unincorporated Palm Beach County FLU designation of CH/8 and a Zoning designation of CG. The multi-family residential development, known as The Villages of Oriole, consists of 3,742 dwelling units and retains a FLU designation of HR-12 and Zoning District of RH (Multi-family Residential High-Density District). The proposed development provides a 8-foot wide Compatibility Buffer for the eastern property line that abuts the commercial portion of the subject site, which is the same the previous approved Site Plan.

4. 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.

Response: The proposed redesign of the commercial portion provides adequate continuous circulation around Buildings A and B, in addition an unobstructed pedestrian connection. The access point from Atlantic Avenue is not modified. An additional cross-access point is proposed along the eastern portion of the commercial component to the abutting vacant commercial zoned property. Please see below the comparison between the approved Site Plan and proposed modification to the Site Plan.



Justification Statement
Terra Nova MUPD

February 22, 2022
Page | 6



5. Design Minimizes Environmental Impact

The proposed use and design minimizes environmental impacts, including, but not limited to, water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.

Response: The subject site is cleared and has no existing vegetation that requires to be reviewed for preservation. A prior condition of approval to ensure a Phase I Environmental Audit in order to determine the presence of any onsite contamination has been placed upon this petition.

6. Development Patterns

The proposed use or amendment will result in a logical, orderly, and timely development pattern.

Response: The MUPD is surrounded by a mix of established residential and commercial uses or zoned properties. The Terra Nova MUPD with its approved density and intensity has been previously determined that the development will be implemented in an orderly and timely manner based on the compliance of the traffic performance related conditions of approval. The current requests will result in a similar development pattern subject to revised conditions, where applicable.

7. Adequate Public Facilities

The extent to which the proposed use complies with [Art. 2.F, Concurrency \(Adequate Public Facility Standards\)](#).

Response: The previous Site Plan for DOA/CA-2018-1690 was approved with concurrency. The DOA requests to modify the retail footage from 17,685 square feet to 27,559 square feet and the Type 1 restaurant with drive through from 6,815 square feet to 4,600 square feet (inclusive of 600 square feet of outdoor dining). It is anticipated that adequate public facilities can be provided to the proposed modification to the commercial portion.

8. Changed Conditions or Circumstances

There are demonstrated changed site conditions or circumstances, provided by the Applicant's Justification Statement that necessitate a modification.

Response: The applicant proposes to change the last approval to accommodate a new grocery store retail tenant in Building B, which requires 19,029 square feet to comply with their design prototype.

DEVELOPMENT ORDER ABANDONMENT

Pursuant to Article 2.B.7.F – Development Order Abandonment, any abandonment of a prior Development Order (DO) that was subject to a Board approval, the same Board that granted the original DO shall render a decision on the request for the abandonment. The Applicant is requesting the BCC the abandonment of Resolution R-2020-00190, which allowed for a Type 1 restaurant with a drive through on commercial Building B, for the reasons that a new grocery retail tenant would like to move into a building that has a minimum square footage of 19,200+ square feet.

STANDARDS FOR ZONING VARIANCE: TYPE 2 VARIANCE

Pursuant to Article 2.B.7.E.6, the Applicant is required to address the seven criteria listed below for the Zoning Commission to consider and make a final decision on the request. As mentioned before under the DOA analysis of Design Minimizes Adverse Impact, the proposed revision on the parking lots that serve Buildings A and B will not meet the current requirements for Table 7.C.4.A – Landscape Island and Divider Median Planting and Dimensional Requirements, the Code requires all divider medians to have a minimum width of 10 feet, there are two areas where the proposed medians are adjacent to parking spaces along both sides of the main access point off Atlantic Avenue which do not meet the minimum 10-foot wide requirement. Therefore, the Applicant is requesting a “blanket” type variance to allow the reduction of width from 10 feet to 7 feet, a maximum reduction of 3 feet.

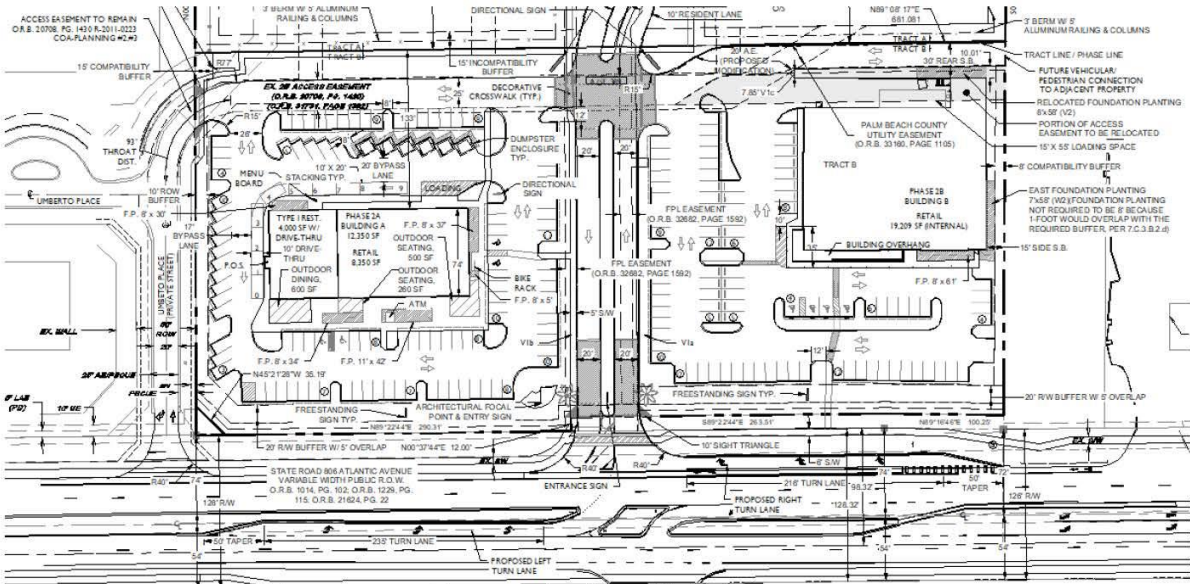
The medians where they do not comply with the Code requirement are summarized as follows, and are identified as V1a to V1b:

Justification Statement
Terra Nova MUPD

February 22, 2022
Page | 7



- V1a) Width Reduction - Main access point/drive aisle off Atlantic Avenue – the proposed median width on the east side is approximately 7.42 feet.
- V1b) Width Reduction - Main access point/drive aisle off Atlantic Avenue – the proposed median width on the west side is 8.67 feet; however, the main median that splits the driveway is at 12 feet;
- V1c) Width Reduction – Cross access drive aisle with adjacent eastern property – the proposed median width on the south side is 7.85 feet.



Variance	ULDC SECTION	REQUIRED	PROPOSED	VARIANCE
V1a, V1b, V1c	2.B.7.E.6	10' wide divider median	Varies between 7.42' and 8.67'	Reduction between 2.58' and 1.33'
V2	7.C.3.B.	Foundation Planting 40% of Building Side (west) with a maximum reduction of 50%	Foundation Planting on 0% of Building Side West with a relocation of 100% (to north side)	Increase relocation of foundation planting from 50% to 100%

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].

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;

V1a, V1b, and V1c - The new grocery retail building B requires to be serviced with a Standard Type "B" (15' x 55') loading space and the maneuvering requirements for a semi-truck are such that the wider turning movements cannot accommodate full width divider medians.

V2 -The ULDC only requires 40% of the side façade to have foundation planting. By relocating the foundation planting to the rear (north) side of the building, 100% of the rear side will have foundation planting, which is a net gain of 60%.



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

V1a, V1b, V1c - Although the two affected divider medians at the main entrance along Atlantic Avenue do not technically meet the 10-foot wide standard, the adjacent parking spaces do not have wheel stops and have a 2.5' wide landscaped overhang adjacent to the divider median. This means that when viewed on the ground there will be a 9.92-foot wide and a 11.17-foot-wide landscaped median, which meets the intent of the 10-foot-wide divider median standard. The 7.85-foot affected divider median along the proposed eastern cross access drive aisle allows for sufficient turning radius for the 15 feet x 55 feet loading space, as well as the proposed 20 foot access easement.

V2 -The ULDC only requires 40% of the side façade to have foundation planting. By relocating the foundation planting to the rear (north) side of the building, 100% of the rear side will have foundation planting, which is a net gain of 60%.

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;

V1a, V1b, V1c - Although the two affected divider medians at the main entrance along Atlantic Avenue do not technically meet the 10-foot wide standard, the adjacent parking spaces do not have wheel stops and have a 2.5' wide landscaped overhang adjacent to the divider median. This means that when viewed on the ground there will be a 9.92-foot wide and a 11.17-foot-wide landscaped median, which meets the intent of the 10-foot-wide divider median standard. The 7.85-foot affected divider median along the proposed eastern cross access drive aisle allows for sufficient turning radius for the 15 feet x 55 feet loading space, as well as the proposed 20 foot access easement.

V2 -The ULDC only requires 40% of the side façade to have foundation planting. By relocating the foundation planting to the rear (north) side of the building, 100% of the rear side will have foundation planting, which is a net gain of 60%.

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;

V1a, V1b, V1c - Although the two affected divider medians at the main entrance along Atlantic Avenue do not technically meet the 10-foot wide standard, the adjacent parking spaces do not have wheel stops and have a 2.5' wide landscaped overhang adjacent to the divider median. This means that when viewed on the ground there will be a 9.92-foot wide and a 11.17-foot-wide landscaped median, which meets the intent of the 10-foot-wide divider median standard. The 7.85-foot affected divider median along the proposed eastern cross access drive aisle allows for sufficient turning radius for the 15 feet x 55 feet loading space, as well as the proposed 20-foot access easement.

V2 -The ULDC only requires 40% of the side façade to have foundation planting. By relocating the foundation planting to the rear (north) side of the building, 100% of the rear side will have foundation planting, which is a net gain of 60%.

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

V1a, V1b, V1c - The variance is the minimum variance needed and is only a reduction of 2.58' at the most and it only affects two divider medians on either side of the main entrance drive and one divider median along the eastern cross access drive aisle.

V2 -The ULDC only requires 40% of the side façade to have foundation planting. By relocating the foundation planting to the rear (north) side of the building, 100% of the rear side will have foundation planting, which is a net gain of 60%.



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

V1a, V1b, V1c - Although the two affected divider medians at the main entrance along Atlantic Avenue do not technically meet the 10-foot wide standard, the adjacent parking spaces do not have wheel stops and have a 2.5' wide landscaped overhang adjacent to the divider median. This means that when viewed on the ground there will be a 9.92-foot wide and a 11.17-foot-wide landscaped median, which meets the intent of the 10-foot-wide divider median standard. The 7.85-foot affected divider median along the proposed eastern cross access drive aisle allows for sufficient turning radius for the 15 feet x 55 feet loading space, as well as the proposed 20-foot access easement.

V2 -The ULDC only requires 40% of the side façade to have foundation planting. By relocating the foundation planting to the rear (north) side of the building, 100% of the rear side will have foundation planting, which is a net gain of 60%.

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

V1a, V1b, V1c - Although the two affected divider medians at the main entrance along Atlantic Avenue do not technically meet the 10-foot wide standard, the adjacent parking spaces do not have wheel stops and have a 2.5' wide landscaped overhang adjacent to the divider median. This means that when viewed on the ground there will be a 9.92-foot wide and a 11.17-foot-wide landscaped median, which meets the intent of the 10-foot-wide divider median standard. The 7.85-foot affected divider median along the proposed eastern cross access drive aisle allows for sufficient turning radius for the 15 feet x 55 feet loading space, as well as the proposed 20-foot access easement.

V2 -The ULDC only requires 40% of the side façade to have foundation planting. By relocating the foundation planting to the rear (north) side of the building, 100% of the rear side will have foundation planting, which is a net gain of 60%.

TYPE 1 WAIVER CRITERIA

This proposal meets the following criteria set forth in Table 7.B.4.A – Type 1 Waivers for Landscaping of the Palm Beach County Unified Land Development Code (ULDC) for Type 1 Waiver Approval.

WAIVER	ULDC SECTION	REQUIRED	PROPOSED	WAIVER
W2	Table 6.E.2.B.3	8' Foundation Planting Depth	7'	Decrease of 1' Planting Depth

TYPE 1 WAIVER STANDARDS

This proposal meets the following standards set forth in Section 2.C.5.F.3 of the Palm Beach County Unified Land Development Code (ULDC) for Type 1 Waiver Approval.

- **The Waiver does not create additional conflicts with other requirements of the ULDC and is consistent with the stated purpose and intent for the Zoning district or Overlay.**

The ULDC only requires 8 feet of foundation planting depth. The foundation planting depth is not required to be 8 feet because 1 foot would overlap with the required by buffer per 7.C.3.B.2.d.

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

The ULDC only requires 8 feet of foundation planting depth. The foundation planting depth is not required to be 8 feet because 1 foot would overlap with the required by buffer per 7.C.3.B.2.d.



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

The ULDC only requires 8 feet of foundation planting depth. The foundation planting depth is not required to be 8 feet because 1 foot would overlap with the required by buffer per 7.C.3.B.2.d.

Based on the above and attached information, the Petitioner respectfully requests the approval of the requests.