

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

Application No.: ZV-2021-01937
Application Name: Critchfield Holdings
Control No./Name: 2004-00206 (Ascot 44 Atlantic PUD)
Applicant(s): Richard Critchfield
Owner(s): Richard Critchfield
Agent(s): Dunay, Miskel and Backman, LLP - Ele Zachariades
Dunay, Miskel and Backman, LLP - Beth Schrantz
Telephone No.: (561) 405-3300, (561) 405-3349
Project Manager: Donna Adelsperger, Site Planner II

TITLE: a Type 2 Variance **REQUEST:** to reduce the side and rear setbacks for Buildings B and C and the outdoor storage area

APPLICATION SUMMARY: Proposed are four Type 2 Variances for Critchfield Holdings. The subject site is a Preserve Parcel for an Agricultural Reserve Planned Unit Development (AGR-PUD) called Ascot 441 Atlantic PUD. The subject site has been operating as a Wholesale Nursery use.

The Applicant is seeking variances to accommodate reduced setbacks for the outdoor storage area for a Landscape Services use. The approval of the use, through the administrative process, is contingent upon the Zoning Commissions approval or denial of the requested variances. Variance 1, requests an outdoor storage side setback of 8 feet (ft.) from the eastern property line, versus the required 50 ft. setback (42 ft. reduction). Variance 2, requests an outdoor storage rear setback of 65 ft. from the northern property line, versus the required 100 ft. (35 ft. reduction). Variance 3, requests a 30 ft. side setback for Building B and C, versus the required 50 ft. (20 ft. reduction). Variance 4, requests a 59 ft. rear setback for Building B, versus the required 100 ft. (41 ft. reduction).

The Preliminary Site Plan (PSP) indicates a 3.56-acre Wholesale Nursery and 1.34-acre Landscape Service use with a total of three structures for the site, totaling 5,845 square feet (sq. ft.). There is one existing access point to the subject site from Lyons Road.

Following a postponement from the Zoning Commission hearing on May 5, 2022, the Agent met with Staff to discuss the proposed variances. They followed up with Staff requesting a withdrawal of the variances to reduce the side and rear setbacks of Buildings B and C (Variance 3 and 4 described above), and revised the site plan accordingly.

SITE DATA:

Location:	Approximately 0.12 mile north of Happy Hollow Road and approximately 0.1 mile west of Lyons Road
Property Control Number(s)	00-42-46-18-03-001-0000
Existing Land Use Designation:	Agricultural Reserve (AGR)
Existing Zoning District:	Agricultural Reserve Planned Unit Development (AGR-PUD)
Acreage:	4.9 acres
Tier:	Agricultural Reserve
Overlay District:	None
Neighborhood Plan:	None
CCRT Area:	None
Municipalities within 1 Mile	None
Future Annexation Area	None
Commission District	District 5, Commissioner Maria Sachs

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

ACTION BY THE ZONING COMMISSION (ZC): At the April 7, 2022 ZC Hearing, this item was postponed to the May 5, 2022 ZC Hearing. At the May 5, 2022 ZC Hearing this item was postponed to the June 2, 2022 ZC Hearing.

MEETING FOLLOWING MAY 5, 2022 ZC: Staff met with the Applicant/Agent to discuss the proposed requests and Staff’s recommendation. Based on that discussion, the Agent met with their client and decided to amend the request to eliminate the requests to reduce setbacks for proposed structures B and C, and limit the request to a reduction in setback for the outdoor storage for the Landscape Service use.

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

PROJECT HISTORY (Preserve Area 2 of Ascot 441 Atlantic AGR-PUD):

In 2004, this parcel was rezoned from the AGR Zoning District to AGR-PUD Zoning District and incorporated into the Ascot 441 Atlantic AGR-PUD as a preserve parcel. Pursuant to ORD 2003-067, Landscape Service was allowed in conjunction with a Retail or wholesale nursery, if it had DRO approval. This site did not have an administrative approval for the use. When the site was added to the AGR-PUD the use of Landscape Service was only allowed within the Commercial Pod of the PUD, or as an accessory use to a Wholesale Nursery. The accessory use would limit it to being incidental to the nursery use, and subordinate in area, extent and purpose to serve only the principal use. Therefore when the site was added to the PUD in 2004, the Wholesale Nursery with an accessory landscape services was the allowed use.

SURROUNDING LAND USES:

NORTH:

FLU Designation: Agricultural Reserve (AGR)
Zoning District: Agricultural Reserve District (AGR)
Supporting: Agricultural

SOUTH:

FLU Designation: Agricultural Reserve (AGR)
Zoning District: Traditional Marketplace Development (TMD)
Supporting: Institutional (Happy Hollow Charter School, Control No 2004-00616)

EAST:

FLU Designation: Agricultural Reserve (AGR)
Zoning District: Traditional Marketplace Development (TMD)
Supporting: Agricultural (Happy Hollow Charter School, Control No 2004-00616)

WEST:

FLU Designation: Agricultural Reserve (AGR)
Zoning District: Traditional Marketplace Development (TMD)
Supporting: Institutional (Happy Hollow Charter School, Control No 2004-00616)

TYPE 2 VARIANCE SUMMARY

	ULDC Article	Required	Proposed	Variance
V1	5.B.1.A.3.b Outdoor Storage – East property line setback	50 feet	8 feet	reduction of 42-feet
V2	5.B.1.A.3.b Outdoor Storage – North property line setback	100 feet	65 feet	reduction of 35-feet
V3	3.D.1.A Side setback Buildings B and C	50 feet	30 feet	reduction of 20-feet
V4	3.D.1.A Rear setback Building B	100 feet	59 feet	reduction of 41-feet

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 – V2 Yes: There are existing special conditions and circumstances that are peculiar to this parcel of land, that are not applicable to other parcels of land in the same zoning district. Outdoor storage setback regulations for Non-residential uses have existed in the code since 1972, though outdoor storage area did not include the requirement for vehicles to be located within that area. Though the use was previously approved as wholesale nursery with accessory landscape service, the landscape service use was only allowed when incidental to the nursery use and restricted to 30% of the sales receipts and size. The Applicant has continued use of both the Wholesale Nursery and Landscape Service use since 2002, including when it was added to the PUD in 2004. Figure A and B below shows the location of the vehicles in 2005 and present, in the same location. The

Applicant is going through the process to bring the use in compliance with the code, and is required to comply with the requirements of Outdoor storage. Although the outdoor storage was previously implemented along the east property line, it does not comply with current UDLC requirements, thus the need for the Variance. The location of the vehicles will be setback an additional 8 feet, with a proposed condition to install an eight foot compatible buffer, which may be used as plant matter from the nursery. The location does not impede the operation of the agricultural use.



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

V1 – V2 Yes: There are special circumstances and conditions that are not the result from the actions of the Applicant. Though the use was previously approved as wholesale nursery with accessory landscape service, the landscape service use was solely incidental to the nursery use and restricted to 30% of the sales receipts. The modifications of the code in 2020 allowed these uses to co-exist within the Preserve of an AGR-PUD, but the storage area requirements were revised to require the stored business related vehicles for the landscape service use meet the setbacks and screening requirements. The Applicant is currently under code Enforcement for operating a use without the proper approval, as the Landscape Service was modified from accessory use to a use associated with the wholesale nursery, pursuant to the application of this use in the preserve area of an AGR-PUD. The Applicant desires to retain the outdoor storage area in the current location, as it was previously allowed when accessory to the Nursery before the code was amended. .

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 – V2 Yes: Granting of this variance will not confer special privilege denied by the Comprehensive Plan and the Unified Land Development Code to other parcels of land, structures or buildings in the same zoning district. The ULDC permits approval of a variance when there are no other design options and certain criteria are satisfied. It is the Applicants desire to keep the outdoor storage area in the location currently being utilized, relocation to meet the setbacks will have an impact on the location of the growing area for the bonafide agricultural use. Location of the parking is remaining in the location it has been since the use was considered accessory.

- 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 – V2 Yes: Literal interpretation and enforcement of the terms and provisions of this Code would deprive the Applicant of rights commonly enjoyed by other parcels of land in the same zoning district, and would work an unnecessary and undue hardship. The Applicant is requesting to allow the outdoor storage to remain within the setback, as it was allowed when the use was accessory and not required to meet setbacks under the prior regulations. Relocation to meet the setbacks will have an impact on the location of the growing area for the bonafide agricultural use

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

V1 – V2 Yes: Granting of these variances are the minimum variances that will make possible the fair and reasonable use of this parcel of land, building or structure. Keeping the parking in the location will not impact the agricultural use and the growing area of the plants. The minimum 8 foot setback to accommodate compatibility buffer along the east and 65-foot setback along the north is reasonable use of this parcel, and for the use as proposed..

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

V1 – V2 - Yes: Granting of this variance is not inconsistent with the purposes, goals objectives and policies of the Plan and this Code. The outdoor storage area setbacks, as it relates to the parking of business related vehicles is new to the Code, pursuant to ORD, 2019-039. Other outdoor storage requirements have been in the code and apply to all non-residential uses since 1972, and the Applicant will be complying with those regulations, in addition to providing the landscape buffers along the perimeter of the development. The Applicant desires to retain the setbacks currently being used for the outdoor storage.

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

V1 – V2 - Yes: Granting the variance will **not** be injurious to the area involved or otherwise detrimental to the public welfare as the outdoor storage of the vehicles has been in the same location for this site since 2002, prior to the Code changing. setback has been in the ULDC since 1972 and applies to all non-residential uses. The perimeter buffering and screening.

CONCLUSION: Staff has evaluated the standards listed under Article 2.B.7.E.6 and has determined that there is a balance between the need for change and the potential impacts generated by the request for reduction of the outdoor storage setback. ; Therefore, Staff is recommending **approval** of the Type 2 Variances, for the reduction in outdoor storage setbacks, subject to the Conditions of Approval as indicated in Exhibit C.

CONDITIONS OF APPROVAL

EXHIBIT C

Type 2 Variance - Standalone

ALL PETITIONS

1. The approved Preliminary Site Plan is dated May 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)
2. At time of application for a Building Permit, the Property Owner shall provide a copy of this Variance approval along with copies of the approved Plan to the Building Division. (BLDGPMT/ONGOING: BUILDING DIVISION - Zoning)
3. The Development Order for this Standalone Variance shall be tied to the Time Limitations of the Development Order for DRO-2020-1895. The Property Owner shall secure a Building Permit or Commencement of Development to vest this Variance. (ONGOING: ZONING - Zoning)
4. Prior to 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 for Application DRO-2020-01895. (DRO: ZONING – Zoning)

LANDSCAPE –PERIMETER

1. An 8-foot wide Compatible Buffer shall be installed along the east property line. The buffer shall commence at the south end of the 41.72-foot LWDD Easement and run south a distance of one hundred and thirty (130) feet. (DRO/BLDGPMT: ZONING – Zoning)
2. The 8-foot Compatible Buffer, on the east property line shall be installed within 180-days of Zoning Application DRO-2020-1895 receiving Final Site Plan approval. (DATE: ZONING – Zoning)

USE LIMITATIONS

- 1 This Variance is approved for the Landscape Service use outdoor storage area. Any change to the use(s) shall require reconsideration of the Variance by the Zoning Commission. (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: MONITORING - Zoning)

DISCLOSURE

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

Figure 2 - Zoning Map

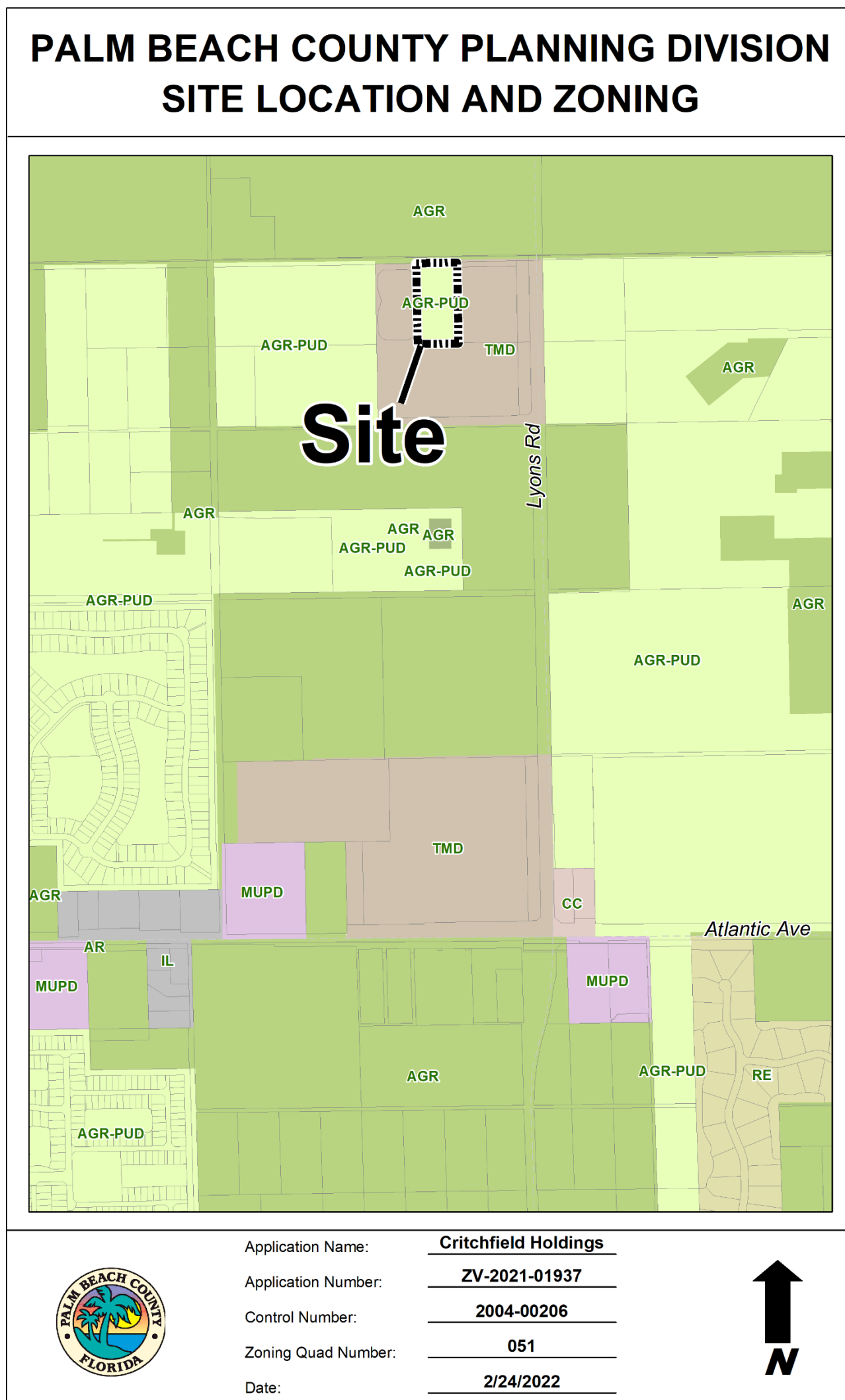


Figure 3 - Aerial

PALM BEACH COUNTY PLANNING DIVISION

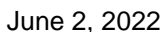
SITE LOCATION



Application Name:	<u>Critchfield Holdings</u>
Application Number:	<u>ZV-2021-01937</u>
Control Number:	<u>2004-00206</u>
Atlas Page Number:	<u>098</u>
Date:	<u>2/24/2022</u>



Zoning Commission
Application No. ZV-2021-01937



Zoning Commission
Application No. ZV-2021-01937



Exhibit D – Disclosure of Ownership

DISCLOSURE OF OWNERSHIP INTERESTS – PROPERTY

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

TO: PALM BEACH COUNTY PLANNING, ZONING AND BUILDING EXECUTIVE DIRECTOR, OR HIS OR HER OFFICIALLY DESIGNATED REPRESENTATIVE

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared Richard H Critchfield, 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 ☐ [position - e.g., president, partner, trustee] of Richard H Critchfield [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: 985 Treasure Lane, Vero Beach, FL 32963
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.

Richard H Critchfield, Affiant
(Print Affiant Name)

NOTARY PUBLIC INFORMATION:

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 27th day of October, 2021 by Richard H Critchfield (name of person acknowledging). He/she is personally known to me or has produced FD DL (type of identification) as identification and did/did not take an oath (circle correct response).

Vanessa Hughes (Name - type, stamp or print clearly) Vanessa Hughes (Signature)

My Commission Expires on: _____

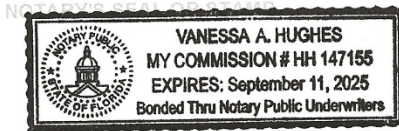


EXHIBIT "A"

PROPERTY

TRACT "A" CRITCHFIELD PLAT - PRESERVE AREA 2, AS RECORDED IN PLAT BOOK 107 AT PAGE 85 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

SAID LANDS SITUATE IN PALM BEACH COUNTY, FLORIDA AND CONTAINING 4,896 ACRES, MORE OR LESS.

LYING IN SECTION 18, TOWNSHIP 46 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA.

SUBJECT TO EASEMENTS, RESTRICTIONS, CONVENANTS, AND RIGHTS-OF-WAY OF RECORD.

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

Richard H Critchfield - 985 Treasure Lane, Vero Beach, FL 32963

**Critchfield Holdings
14124 Smith Sundry Road
Justification Statement for Type 2 Variance for Building Setbacks**

Richard H Critchfield (“Petitioner”) is the owner of the +/- 4.89 acre property located at 14124 Smith Sundry Road (“Property”), which is generally located north of Happy Hollow Road between Lyons Road and Smith Sundry Road in unincorporated Palm Beach County (“County”), and is identified by parcel control number (PCN) 00-42-46-18-03-001-0000. The Property is located within the Agricultural Reserve Tier, designated AGR, Agricultural Reserve, on the County’s Future Land Use Map, and is located within the AGR-PUD, Agricultural Reserve Planned Unit Development, zoning district.

PROJECT HISTORY

The Property is one of 28 parcels being considered for a Wholesale Nursery in conjunction with Landscape Service use under the AGR-PUD regulations for a Preserve parcel. Petitioner has operated a Landscape Service on a portion of the Property since 2002 with approval for the use granted through the County’s Business Tax Receipt process, a process that typically requires County Zoning review and sign-off prior to issuance of a Business License. The Landscape Service has been duly licensed under License Number 200301088 with the required business taxes being paid since the establishment of the Landscape Service business in 2002.

In 2004, the Property was rezoned to AGR-PUD Preserve as part of the Ascot 441 Atlantic PUD, which is also known as the Tivoli Isles AGR-PUD (“Rezoning”). The Property is identified as Preserve P2 of this AGR-PUD. The Landscape Services business was in operation at the time of the Rezoning as was noted in the staff report for the Rezoning. An excerpt from the staff report reflecting this is provided below.

Preserve Area 2 (Critchfield): 4.89 acres. This parcel is located east of Smith Sunday Road, west of Starkey Road and north of Atlantic Avenue. This parcel currently supports a working landscaping business.

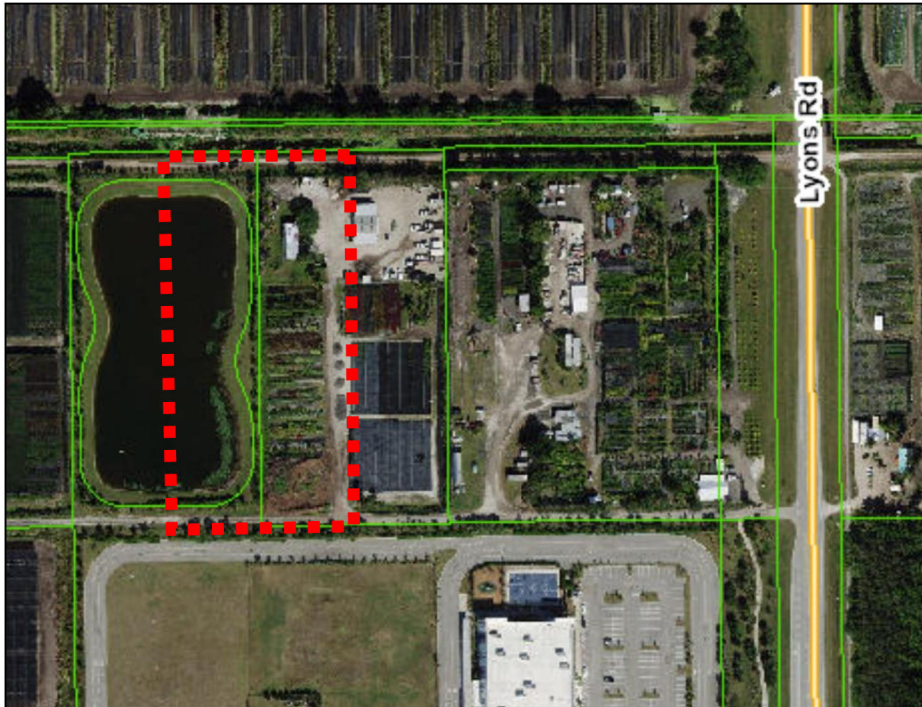
The existence of and intent to continue the Landscape Service use was further noted in the Preserve Management Plan reviewed and approved in conjunction with the Rezoning. An excerpt from the approved Preserve Management Plan noting the existence of and continuation of operations for the Landscape Services use.

Preserve Area 2, PCN 00-42-46-18-01-000-0030
Preserve Area 2 consists of a working landscaping business, Osprey Landscape Contracting. The site contains a trailer and a shed. These structures will remain on-site. The landscape business will continue to operate. The following table lists the vegetation present.

Pursuant to the Unified Land Development Code (“ULDC”) text amendment adopted by the BCC on July 30, 2020, through Ordinance 2020-016, the existing use of a Wholesale Nursery in conjunction with Landscape Service is an allowable use subject to Development Review Officer (“DRO”) approval with the limitation that landscape services shall not encompass more than 30% of the Property. In November 2020 Petitioner submitted Application Number DRO-2020-1895 requesting DRO approval for a Final Site Plan for Wholesale Nursery in conjunction with Landscape Service uses (“DRO Application”).

SURROUNDING CONTEXT

The Property is bounded on the north side by a Lake Worth Drainage District Canal with Palm Beach County owned and managed agricultural land located across the canal to the north. The County owned agricultural land is designed AGR on the County’s Future Land Use Map, located within the AGR, Agricultural Reserve, zoning district, and is intended to be used in perpetuity as active agricultural use. The properties to the east, west, and south are designated AGR, Agricultural Reserve, on the County’s Future Land Use Map, and located within the TMD, Traditional Marketplace Development, zoning district. The property located to the west of the Property is a platted stormwater management tract approved in conjunction with the Happy Hollow School, which is anticipated to serve this stormwater retention purpose in perpetuity. The property to the south of the Property is developed as a school, and the property to the east of the Property is used for retail nursery and related ancillary uses. An aerial depicting the Property and surrounding uses is provided below.



APPLICATION REQUEST

Petitioner has striven to design the site plan for the Property to comply with the provisions of the County’s Unified Land Development Code (“ULDC”) to the greatest extent possible while also considering the context of the surrounding area, the Lake Worth Drainage District easement that encumbers approximately 1/3 of an acre in the northern portion of the Property, and the maximization of the nursery use area in the southern portion of the Property. Petitioner is working to ensure that equipment associated with the nursery and landscape service use are securely stored in an enclosed building, office space is adequately provided, and that a designated area is assigned for all vehicular storage associated with landscaping services. The site plan has been designed to provide the nursery in the southern portion of the Property with the landscape service use area located at the northern end of the Property adjacent to the County’s perpetually preserved agricultural area, consistent with the historic use of the Property. A new building is proposed to replace the existing office trailer at the northwest corner of the Property, and a storage building is proposed to remain in the center of the landscape service area. The outdoor storage area is proposed at the northeast corner of the Property with an eight foot (8’) wide compatibility buffer provided along the east property line where no buffer is required. Access is designed such that vehicles enter the Property via the gravel road to the south and travel north down the 25-wide internal drive aisle to the rear of the Property where there is accessibility to each proposed building, the outdoor storage area, and 19 proposed parking spaces.

It is important to note that the nursery has historically comprised the southern 422 feet of the Property (approximately +/- 76% of the Property area), and a Lake Worth Drainage District easement comprises the northernmost 41.72 feet of the Property (+/- 6% of the Property area). As such, only 24% of the Property is available for Landscape Services use where the ULDC allows 30% of the Property to be used for Landscape Services. Petitioner intends to maintain the maximum possible nursery area and incorporate the eastern portion of the existing easement as a part of the area calculation for the Landscape Services use. This design also insulates the Landscape Services use away from the road easement and school use and locates it closer to the perpetually preserved agricultural and water retention uses.

Table 3.D.1.A of the County’s Development Regulations require minimum front and rear setbacks of 100 feet and a minimum side setback of 50 feet for the Property. As noted above, the nursery growing area encompasses the southern 422 feet of the Property. The practical application of these setback provisions would force the outdoor landscape services storage area to be set back far into the Property from the north as well, which when combined with the restriction imposed by the existing Lake Worth Drainage District easement does not allow for adequate vehicle circulation and parking around the buildings and vehicle storage area. In order to maintain the optimal site design as described herein, Petitioner respectfully requests approval of the following Type 2 Variances to allow the outdoor storage area associated with the landscape service use on the Property:

- **Type 2 Variance from Section 5.B.1.A.3.b to allow a minimum side (east) setback for the Outdoor Landscape Services Vehicular Storage area of eight feet (8’) in lieu of the required fifty foot (50’) east side setback (“V1”); and**
- **Type 2 Variance from Section 5.B.1.A.3.b to allow a minimum rear (north) setback for the Outdoor Landscape Services Vehicular Storage area of sixty-five feet (65’) in lieu of the required one hundred foot (100’) rear setback (“V2”).**

TYPE 2 VARIANCE STANDARDS

Pursuant to ULDC Section 2.B.7.E.6, Petitioner will demonstrate below for the Variance Requests that: 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; b) special circumstances and conditions do not result from the actions of Petitioner; c) granting the variance shall not confer upon Petitioner any special privilege denied by the Plan and this Code to other parcels of land, buildings, or structures, in the same district; d) literal interpretation and enforcement of the terms and provisions of the ULDC would deprive Petitioner of rights commonly enjoyed by other parcels of land in the same district, and would work an unnecessary and undue hardship; e) granting the Variance Request is the minimum variance that will make possible the reasonable use of the parcel of land, building or structure; f) granting the Variance Request will be consistent with the purposes, goals, objectives and policies of the Plan and this Code; and, g) granting the Variance Request will not be injurious to the area involved or otherwise detrimental to the public welfare.

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 – V2: Special conditions and circumstances exist which are peculiar to the Property and are not applicable to other lands, structures, or buildings in the same zoning district. The requested variances entail allowing the outdoor storage area to be located closer to the north and east property line than the strict interpretation of the ULDC allows. As described above, the southern 422 feet of the Property is dedicated to the nursery growing area, which provides the best design for the Property and surrounding area considering the school located to the south, perpetually preserved agricultural use to the north, platted stormwater management area to the west, and nursery located to the east. Considering the configuration and type of the surrounding uses, any office, storage, parking, and vehicle circulation areas associated with the landscape service use must be located at the north end of the Property. However, the northern 41.72' of the Property is encumbered by a Lake Worth Drainage District easement, which restricts Petitioner from using almost a third of an acre of land that would otherwise be useful for vehicular circulation and parking related to the landscape service use. Further in support of the requested variances, the area beyond the easement to the north is agricultural row crop owned by the County that is intended to be preserved for agricultural use in perpetuity, and the area to the east is a dedicated TMD preserve that is intended for use as agricultural uses in perpetuity. Considering that the easement area is unusable for Petitioner's proposed use and that the properties to the north (the County-owned agricultural operation) and east (an agricultural preserve) will never be developed, there are special and unique circumstances that are peculiar to the Property and not applicable to other parcels in the same zoning district.

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

V1 – V2: The special conditions and circumstances noted above do not result from the actions of the Petitioner. The special conditions and circumstances relate to the existing Lake Worth Drainage District easement encumbrance, surrounding uses and development context, and preservation of an existing mature tree. The existing canal system and easement are mandated and governed by the Lake Worth Drainage District and Petitioner has no control over their existing easement area. Further, the County taxpayers approved the \$100 million bond that ultimately resulted in the preservation of the agricultural row crop property located across the canal to the north. As such, the special circumstances and conditions noted above do not result from the actions of the Petitioner.

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 – V2: Granting these variances will not confer on the Petitioner any special privilege that is denied to other properties within the AGR-PUD zoning district. Given the nature of the AGR-PUD zoning district, many AGR-PUD Preserve properties are used as nursery in conjunction with landscape service use with a large area dedicated to growing area, small buildings for office and/or storage, and areas for vehicular circulation. Petitioner is requesting the same type of use and building scale that exists in the immediate area and which is appropriate given the surrounding context. The County would give the same consideration to any other Property located in such an appropriate context where there are no neighboring residential uses, and in order to isolate the impact of the landscape service use in the most remote area of the Property. As such, the granting of the variances will not give the Petitioner any special privilege denied by the Plan and the ULDC to other parcels of land in the immediate area and to other parcels of land in the AGR district.

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 – V2: Literal interpretation and enforcement of the terms and provisions of the ULDC would deprive the Petitioner of rights commonly enjoyed by other parcels of land in the same district and would work an unnecessary and undue hardship. As discussed, there are unique circumstances on the Property that provide limited areas for buildings and storage while meeting the required setbacks. Requiring the outdoor vehicle storage area to comply with the Code’s minimum 100 foot rear setback and 50 foot side setback would result in the relocation of the landscape service area to the south where nursery growing area currently exists and in closer proximity to the existing school use. Therefore, the literal interpretation and enforcement of the Code would deprive Petitioner of rights enjoyed in the same zoning district.

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

V1 – V2: The variances requested are the minimum necessary to ensure there is sufficient storage for equipment and vehicles. The outdoor storage area is compatible and similar in use to the uses on nearby properties. As mentioned, requiring the outdoor vehicle storage area to comply with the Code’s minimum 100 foot rear setback and 50 foot side setback would result in the likely reduction of active growing area. If approved, the variances will not negatively impact the adjacent or nearby properties, and will ultimately make possible the reasonable use of the Property. With the limitation of 30% of the property to be utilized as landscape services, these variance requests are the minimum variance required to make reasonable use of the Property. These variances are further supported considering that to the east is a TMD parcel that transferred the development rights associated with the property and will never be developed, and to the north is a Lake Worth Drainage District canal and County-owned row-crop that will never be developed.

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

V1 – V2: Granting the variances requested is consistent with the purposes, goals, objectives, and policies of the Comprehensive Plan and the ULDC. The proposed setbacks for which the variances are requested are necessary to safely secure nursery and landscape equipment and provide a designated area for vehicle storage. Granting of the Variances will allow the Property to continue to meet the intent of Objective 1.5 which states that the Agricultural Reserve Tier is intended to “preserve and enhance agricultural activity and environmental and water resources in the Ag Reserve, and produce a master development plan compatible with these goals.” Further, Policy 1.4-c of the Plan mandates that the County protect rural areas and provide for preservation of agriculture. Approval of the variances will enhance the economic viability of the nursery and landscape service business, which is consistent with the County Comprehensive Plan and ULDC.

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

V1 – V2: Granting the Variances requested will not be injurious to the area involved or otherwise detrimental to the public welfare. The Property is adjacent to a plant nursery to the east, a water management tract to the west, farmland to the north across from Smith Sundy Road and a canal, and a public charter school to the south. To the east is also an AGR-PUD parcel that transferred the development rights associated with the property. As such, it will never be developed. To the north is a Lake Worth Drainage District easement. This easement area also encumbers the 41.72’ of north end of the Petitioner’s property – further limiting the use of the property. This easement area will never be developed.

The on-site nursery 422 feet of nursery growing area will buffer the outdoor vehicle storage area from the school to the south. Additionally, a compatibility buffer is proposed along the east property line adjacent to the outdoor vehicle storage to screen the area from adjacent properties. The buildings and outdoor vehicle storage area are not anticipated to produce harmful pollutants, excessive noise, or toxic runoff. Approval of the Variances will enhance the public’s safety by ensuring secure storage of landscape equipment that could otherwise be harmful if left unattended, and designating a specific area for vehicle storage so that the remaining vehicular areas on site can be used for parking and circulation. As such, granting the Variances will not be injurious to the area involved or public welfare, but rather it will ensure that the Project is a valuable community asset that will benefit the welfare of the community.

CONCLUSION

The Type 2 Variance application is consistent with the Goals and Objectives of The Plan and meets the applicable standards of the ULDC. Petitioner respectfully requests Type 2 Variance approval of the Project’s proposed storage and office buildings and proposed outdoor storage area.