

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



**ZONING COMMISSION VARIANCE
STAFF REPORT
June 07, 2012**

APPLICATION NO.	CODE SECTION	REQUIRED	PROPOSED	VARIANCE
ZV-2012- 00981	3.D.1.A Building Coverage	Maximum of 40 % building coverage for a Single-family dwelling	Up to 44% building coverage for single-story Single-family units	To allow an increase of 10% in building coverage for single story Single-family units
SITUS ADDRESS:	11050 Acme Dairy Rd Boynton Beach 33473			
AGENT NAME & ADDRESS:	Collene Walter Urban Design Kilday Studios 477 S Rosemary Ave West Palm Beach FL 33401			
OWNER NAME & ADDRESS:	GL Homes 1600 Sawgrass Corporate Pkwy Fort Lauderdale FL 33323			
PCN:	00-42-43-27-05-059-0021			
ZONING DISTRICT:	Agricultural Reserve Planned Unit Development (AGR-PUD)			
BCC DISTRICT:	05			
PROJECT MANAGER:	Donna Adelsperger, Site Planner I			
LEGAL AD:	ZV-2012-00981 Title: Resolution approving a Type II Variance application of Boynton Beach Associates XXIII LLLP by Urban Design Kilday Studios, Agent. Request: to allow an increase in building coverage for single story single-family units within Pods D and E of the Trails at Canyon Agricultural Reserve-Planned Unit Development (AGR-PUD). General Location: Development parcel is located approximately 1 mile south of Boynton Beach Boulevard, on the east side of Acme Dairy Road (TRAILS AT CANYON AGR PUD) (2006-00550)			
LAND USE:	Agricultural Reserve (AGR)		S/T/R: 27-43-42	
CONTROL #:	2006-00550			
LOT AREA:	Development Area: 201.94 acres Single Family minimum lot size: 6,000 square feet			
MINIMUM LOT DIMENSIONS:	Single Family Lot: 65 feet wide by 75 feet deep			
CONFORMITY OF LOT:	Conforming	CONFORMITY OF ELEMENT:		

TYPE OF ELEMENT:	Building coverage is defined as that portion of the lot area occupied by the ground floor square footage of a building or structure expressed as a percentage	ELEMENT SIZE:	an increase of 10% in building coverage for single story Single-family units
BUILDING PERMIT #:	N/A	NOTICE OF VIOLATION:	N/A
CONSTRUCTION STATUS:	Unconstructed		
APPLICANT REQUEST:	To allow an increase in building coverage for single story single-family units within Pods D and E.		

STAFF SUMMARY

Type II Zoning Variance Request

The applicant is requesting a Type II Variance for the Trails at Canyons Agricultural Reserve Planned Unit Development (AGR-PUD). The applicant is requesting to allow an increase in building coverage for the single-story, single-family units from 40% to up to 44%, a variance of up to 10% for Pods D and E. The variance request does not apply to any two-story single-family units or zero lot line homes within Pods D and E or any units outside of Pods D and E.

General Location, Previous Approvals and Existing Conditions

The 201.94-acre development area site is located on the east side of Acme Dairy Road and south of Boynton Beach Boulevard. Access to the development parcel will be provided from 1 access point on Acme Dairy Road. The 377.47 acres of preserve area (known as Chico, Jill, Gaylor, SFWMD #4A and #4B and Bolton) are all located west of SR7/US441 and are not affected by this request.

On June 28, 2007, the Board of County Commissioners (BCC) approved a rezoning to the Agricultural Reserve-Planned Unit Development (AGR-PUD) Zoning District to allow for the development of 579 residential units pursuant to Resolution R-2007-1041. The BCC also approved a Waiver to allow more than 25% of the local streets to terminate in cul-de-sac or dead ends pursuant to Resolution R-2007-1042.

On October 23, 2008, the BCC approved Resolution R-2008-1961 to delete a Planning Condition of Approval which required preserve parcels to be platted.

On February 24, 2011, the BCC approved Resolution R-2011-0224 to modify an Engineering Condition of Approval to extend the build out date for the project and delete portions of the Condition of Approval.

Plats 1 through 4 are already under construction based on the approved Final Site Plans. Plats 5 and 6 have been approved but are not under construction at this time.

Surrounding Land Uses

NORTH:
FLU Designation: AGR
Zoning District: AGR
Supporting: Vacant Land

SOUTH:
FLU Designation: AGR
Zoning District: AGR
Supporting: Agricultural Reserve Preserve Parcel with active agriculture (Control 2003-041)

EAST: (across the Lake Worth Drainage District (LWDD) E-2W Canal and Florida Turnpike)
FLU Designation: Low Residential, 3 units per acre (LR-3)
Zoning District: Planned Unit Development (PUD)
Supporting: Single Family residences (Control No. 2005-008, Mini Assemblage PUD;
Control 1999-058, Tivoli Reserve PUD)

WEST: (across the 80-foot wide Lyons Road right-of-way)
FLU Designation: AGR
Zoning District: AGR-PUD
Supporting Single-family residences (Control No 2002-067, Canyon Lakes; Control
2002-068, Canyon Isles)

Summary of Table 3.D.1.A., Property Development Regulations

The purpose and intent of Table 3.D.1.A is to provide the minimum lot dimension, minimum and maximum density, maximum FAR, maximum building coverage, and minimum setbacks in each zoning district. The front, side, side street and rear setbacks shall be applied in accordance with the lot orientation as defined by lot frontage. The purposes of the aforementioned regulations are to ensure that development within the County occurs in such a way to minimize any potential adverse impacts on surrounding properties, and ensure compliance with the Florida Statutes by implementing and complying with the policies and objectives of the Comprehensive Plan.



Figure 1: Aerial

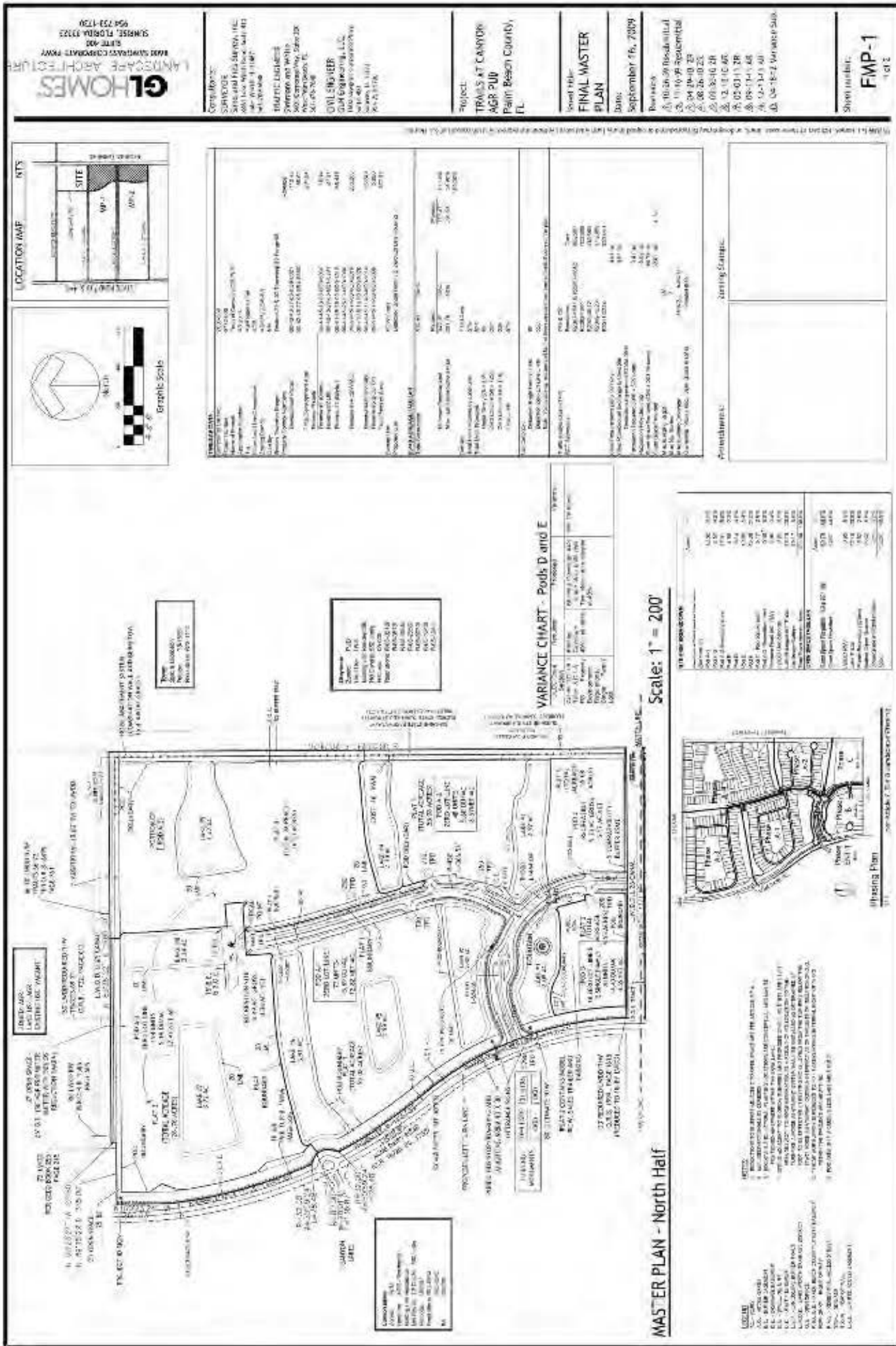


Figure 2: Final Master Plan page 1 dated April 18, 2012

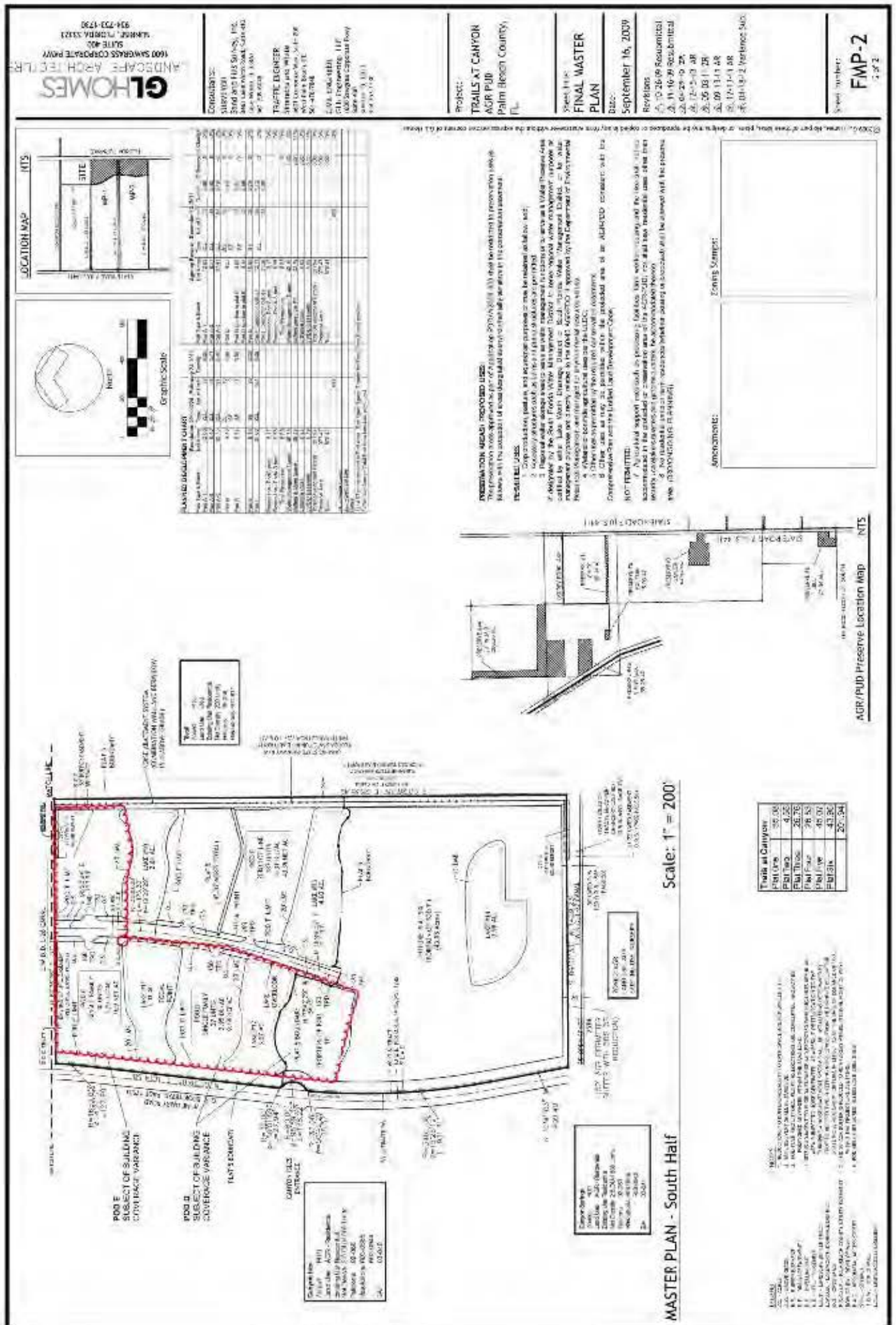


Figure 3: Final Master Plan page 2 dated April 18, 2012

Figure 4: Final Regulating Plan page 2 dated April 18, 2012



Figure 5: Final Subdivision Plan Plat 5 page 1 dated April 18, 2012

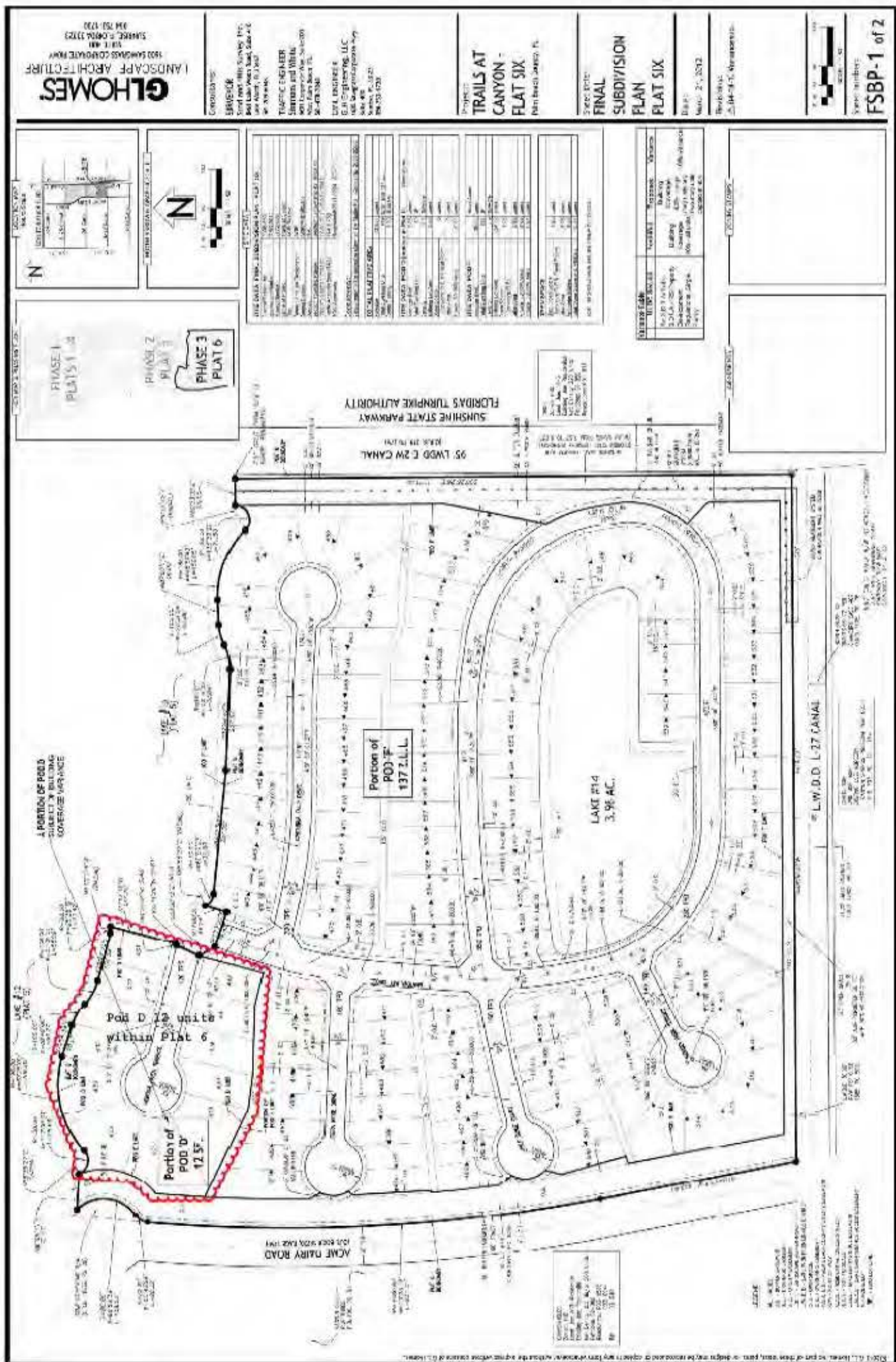


Figure 6: Preliminary Subdivision Plan Plat 6 page 1 dated April 18, 2012



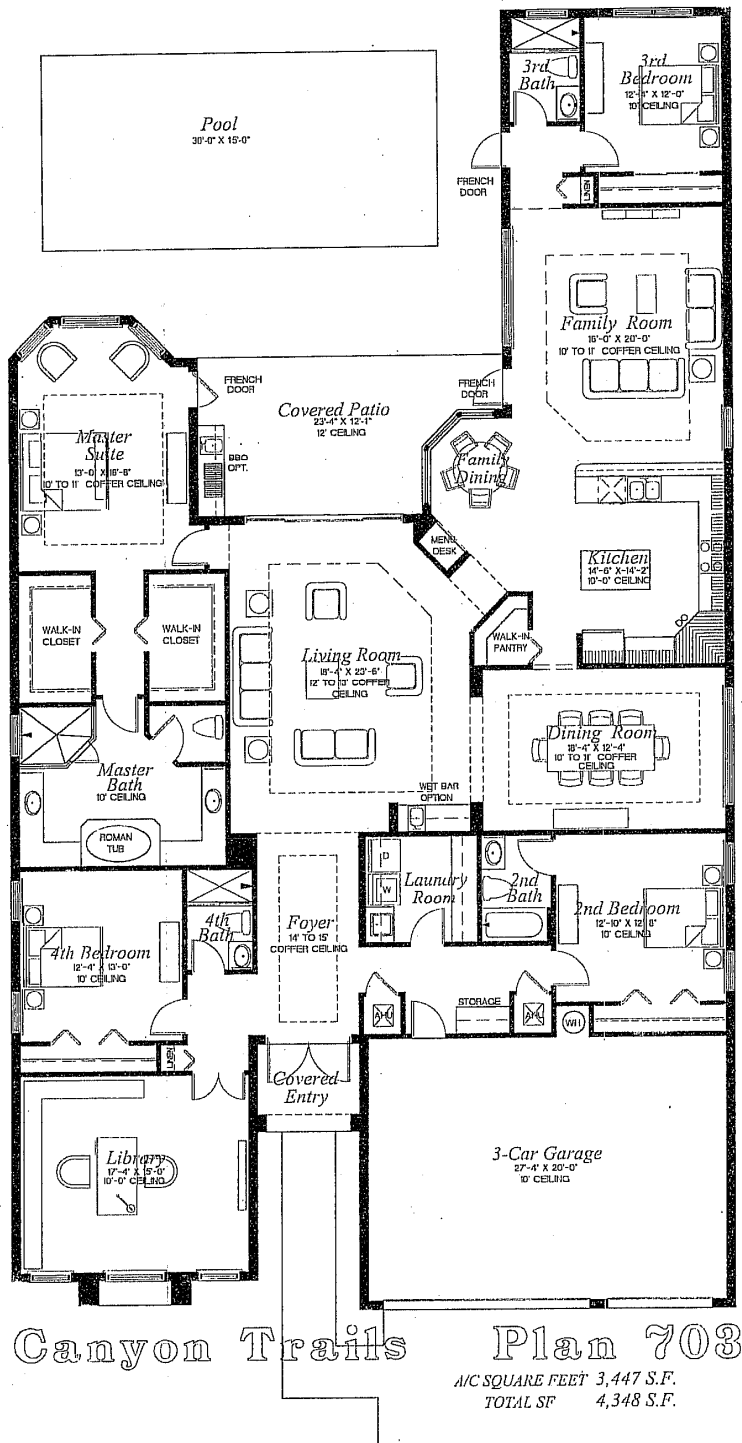


Figure 8: Floor Plan Model 703

STAFF RECOMMENDATIONS

Staff recommends **denial** of the request, based upon the following application of the standards enumerated in Article 2, Section 2.B.3.E of the Palm Beach County Unified Land Development Code (ULDC), which an applicant must meet before the Zoning Commission who may authorize a variance.

ANALYSIS OF ARTICLE 2, SECTION 2.B.3.E VARIANCE STANDARDS

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 ZONING DISTRICT:

NO. There are no special circumstances exist that are peculiar to this development that are not applicable to other developments within the same Zoning District. With the adoption of the new Unified Land Development Code (ULDC) under Ordinance 2003-0067, Article 3 Property Development Regulations was modified, which removed the language for flexible regulations. When this development was originally approved in 2007, the development was subject to the 40% threshold for building coverage for each lot.

The applicant suggests in their Justification Statement (Exhibit E, page 4 of 8) that other AGR-PUDs were allowed to have an increase in building coverage. These PUDs were approved under a different Ordinance. PUDs approved since the adoption of the new Code all have the same requirements for maximum building coverage of 40% for Single Family. The applicant fails to justify why this parcel of land is peculiar and warrants a need to increase building coverage.

If as the applicant states a one-story model must be designed larger to meet the needs/desires/value for a buyer in a non-age restricted community, then the applicant must restrict the one-story models to the lots that are sufficient in size to not exceed minimum Code requirements for building coverage.

2. SPECIAL CIRCUMSTANCES AND CONDITIONS DO NOT RESULT FROM THE ACTIONS OF THE APPLICANT:

NO. The circumstance of one-story model's exceeding the maximum building coverage permitted by Code, are a result of the applicant's actions. The applicant has been through the Final Subdivision Plan review process and knowing the home size, should have designed the lots to accommodate the size of the home versus using a variance to deter the Code.

The applicant also indicates in their Justification Statement (Exhibit E, page 6 of 8) that the need for the increase in building coverage is a circumstance that is market driven in an effort to meet the needs of the home buyers by offering viable single story floor plan options. The applicant indicates that they do not want to be restricted Floor Plans 702 or 703 but want the ability to add plans and or "tweak" the design based on the customers needs. The 10% variance is based on a review of proposed lot sizes. The proposed lot sizes exceed minimum lot dimensions as to width and depth and are "oversized" due to a lot's location on water features, cul-de-sacs, and curved roadways. The applicant has indicated that the variance is restricted to single-story homes but has not indicated which lots would be would be developed as single-story. The request to allow up to a 10% variance for building coverage on any lot in Pod D and E of the development, being developed as a single-story, is a circumstance resulting from the applicant.

3. GRANTING THE VARIANCE SHALL NOT CONFER UPON THE APPLICANT ANY SPECIAL PRIVILEGE DENIED BY THE COMPREHENSIVE PLAN AND THIS CODE TO OTHER PARCELS OF LAND, BUILDINGS OR STRUCTURES IN THE SAME ZONING DISTRICT:

NO. All applicants must meet the minimum requirements of the Code at the time of application submittal. The ULDC in effect on November 17, 2010 was Ordinance 2003-067 Supplement 9.

The applicant states that the Canyon Lakes, Canyon Isles and Canyon Springs were all approved under flexible regulations that were removed from the ULDC prior to the Trails at Canyon AGR-PUD initial Development Order. However, these applications were approved under a prior Code and not

precedent-setting as to a variance request. Granting of the variance would set a precedent that an applicant can choose a particular prior Code requirement or, as in this case, particular flexibility in a prior Code without complying with the entire Code in effect at the time of application. The applicant has the ability to design the lots to accommodate the Code required building coverage for their floor plans.

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 ZONING DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP:

NO. All PUDs approved under the 2003-067 Ordinance are all subject to the maximum 40% building coverage. The applicant states that the project is planned as an moderate-scale family community with pricing starting from around \$275,000 up to the \$550,000 price range. The applicant indicates a need to reduce the “canyon effect” described by the applicant as a streetscape dominated by two-story units and indicates attempts to control the “canyon effect” include offering one-story models within Pod D and E, alternative building facades for two-story models, open spaces, and paint schemes. The applicant indicates that one-story models provide the most effective solution to this “canyon effect,” but only a small percentage of moderate family buyers chose the one-story models opting for the more desirable large square footage of two-story models to accommodate multiple bedrooms, office/den areas, and play rooms. One-story models meeting the square footage needs of a higher percentage of moderate family buyers can meet Code requirements on a larger lot. The applicant can control the streetscape by reserving some of the larger “oversized” lots for one-story models.

5. GRANT OF VARIANCE IS THE MINIMUM VARIANCE THAT WILL MAKE POSSIBLE THE REASONABLE USE OF THE PARCEL OF LAND, BUILDING OR STRUCTURE:

NO. The applicant is requesting a 10% variance for all the lots within Pods D and E of the development that may or may not be developed with single-story single family homes. The applicant indicates that flexibility is needed to add floor plans in the future based on the market, to add covered patios and to adjust to the needs of the buyer. The applicant can reduce the possibility of the “canyon effect” by alternating single story and two story homes and restricting the larger floor plans to the larger lots. The lots can be developed without the need for a variance and as such this is not the minimum variance needed to make reasonable use of the parcel of land.

6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH THE PURPOSES, GOALS, OBJECTIVES, AND POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:

NO. A variance in building coverage of up to 10% is requested to allow the floor plans submitted with this application and any other designed n the future to be built on any of the 57 lots in Pods D and E regardless of the reduction in overall pervious area that may result due to the increase in building coverage. The Type 1B Administrative Variance process allows the review of this standard and the exact increase in building coverage and if an increase in building coverage results in a decrease in pervious area that is recommended to be mitigated through Conditions of Approval that would run with the lot. Again, the increase in building coverage results in a decrease in pervious (green) area.

7. THE GRANT OF THE VARIANCE WILL NOT BE INJURIOUS TO THE AREA INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

No. An application for Development Order shall comply with the ULDC to ensure that all Development Orders approved in unincorporated Palm Beach County (PBC) are consistent with the Comprehensive Plan. The Code establishes comprehensive and consistent standards and procedures for the review and approval of all proposed development of land in unincorporated PBC. Further, the intent of the Code as relative to this request is to prevent the overcrowding of land, facilitate adequate drainage, and consistency in established regulations. [Art. 1.A.1.C.]

Should the Zoning Commission choose to approve the requested variance, staff recommends the following Conditions of Approval.

ZONING COMMISSION CONDITIONS

EXHIBIT C

Type II Variance - Standalone

VARIANCE

1. This Variance was approved based on the layout of the approved Final Master Plan dated April 18, 2012 and Final Subdivision Plans for Pods D and E within Plats 5 and 6 dated April 18, 2012. (ONGOING: BLDG - Bldg)

2. The Development Order for this variance shall be tied to the Time Limitations of the Development Order for EAC-2010-2807. (ONGOING: MONITORING - Zoning)

3. Single family residential units that exceed the maximum building coverage permitted pursuant to this variance approval shall be limited to one-story and shall be located in Pods D and E only. (ONGOING / BLDG PERMIT: ZONING Zoning)

4. Within thirty (30) days of this approval the Final Master Plan and Final Subdivision Plans for Plat 5 and 6 will be updated to reflect the Variance approval granted herein. (DATE: ZONING – Zoning)

5. Prior to application for Building Permit for a single-story Single Family unit, within Pod D or E, with a building coverage greater than 40% and less than or equal to 44%, the Final Subdivision Plan shall be amended to indicate the actual building coverage applicable to that lot. (BLDG PERMIT: BLDG - Zoning)

6. This variance is not applicable to any building permit application increasing building coverage in Pods A, B, C and F. (ONGOING: BLDG - Zoning)

7. Prior to issuance of a Building Permit, for each lot utilizing the increased building coverage, a Landscape Plan must be submitted for review and approval showing the required trees. Each lot requires one tree per each 800 square feet of gross lot area. (BLDG PERMIT: BLDG – Landscape)

8. In granting this approval, the Zoning Commission relied upon the oral and written representations of the property owner/applicant both on the record and as part of the application process. Deviations from or violation of these representations shall cause the approval to be presented to the Board of County Commissioners for review under the compliance condition of this approval. (ONGOING: MONITORING - Zoning)

9. 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 (CO); 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; 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 (ULDC) 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)

PALM BEACH COUNTY - ZONING DIVISION

FORM # 09

DISCLOSURE OF OWNERSHIP INTERESTS - PROPERTY

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

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared N. Maria Menendez, hereinafter referred to as "Affiant," as the Vice President of Boynton Beach XXIII Corporation, a Florida corporation, the general partner of Boynton Beach Associates XXIII, LLLP, a Florida limited liability limited partnership, who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant is the Vice President of Boynton Beach XXIII Corporation, a Florida corporation, the general partner of Boynton Beach Associates XXIII, LLLP, a Florida limited liability limited partnership, which partnership holds the fee simple ownership interest in the 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 1600 Sawgrass Corporate Parkway, Suite 400, Sunrise, Florida 33323.

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.

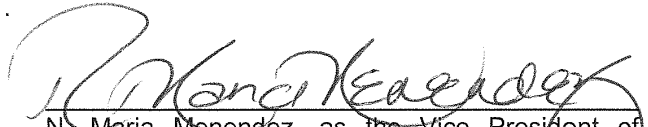
4. Affiant acknowledges that this Affidavit is given to comply with Palm Beach County policy, and will be relied upon by Palm Beach County in its review of application for Comprehensive Plan amendment or Development Order approval affecting the Property. Affiant further acknowledges that he or she is 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.


N. Maria Menendez, as the Vice President of Boynton Beach XXIII Corporation, a Florida corporation, the general partner of Boynton Beach Associates XXIII, LLLP, a Florida limited liability limited partnership

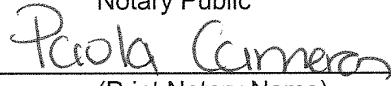
The foregoing instrument was acknowledged before me this 12 day of April, 2012, by N. Maria Menendez, as the Vice President of Boynton Beach XXIII Corporation, a Florida corporation, the general partner of Boynton Beach Associates XXIII, LLLP, a Florida limited liability limited partnership, [X] who is personally known to me or [] who has produced _____ as identification and who did take an oath.



Paola Cameron
COMMISSION # DD983531
EXPIRES: JUN. 25, 2014
WWW.AARONNOTARY.COM



Notary Public


(Print Notary Name)

NOTARY PUBLIC

State of Florida at Large

My Commission Expires: 6/25/14

EXHIBIT "A"**Legal Description of the Property****FOGG V DEVELOPMENT****LEGAL DESCRIPTION:**

(Acme East Development Parcel)

A PORTION OF TRACTS 66 THROUGH 72, 89 THROUGH 95, 98 THROUGH 103, 123 THROUGH 127 AND A PORTION OF A ROAD, DYKE AND DITCH RESERVATION, 30.00 FEET IN WIDTH, ALL LYING WITHIN BLOCK 54, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, OF THE PUBLIC RECORDS, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF SAID TRACT 127; THENCE SOUTH 89°36'36" WEST, ALONG THE SOUTH LINE OF SAID TRACTS 123 THROUGH 127, A DISTANCE OF 1,369.68 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 1,653.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 89°04'45" WEST; THENCE NORTHERLY, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 38°52'24", A DISTANCE OF 1,121.51 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 2,484.00 FEET; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 11°57'33", A DISTANCE OF 518.48 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 32.00 FEET; THENCE NORTHERLY, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 50°59'24", A DISTANCE OF 28.48 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 80.00 FEET; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 98°01'41", A DISTANCE OF 136.87 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 32.00 FEET; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 50°59'24", A DISTANCE OF 28.48 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 2484.00 FEET; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 17°11'32", A DISTANCE OF 745.35 FEET TO A POINT OF INTERSECTION WITH A NON- TANGENT LINE; THENCE NORTH 00°23'24" WEST, A DISTANCE OF 260.63 FEET; THENCE NORTH 89°36'22" EAST, ALONG A LINE 72.00 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACT 72, A DISTANCE OF 315.00 FEET; THENCE NORTH 00°23'24" WEST, ALONG THE EAST LINE OF SAID TRACT 72, A DISTANCE OF 25.80 FEET; THENCE NORTH 89°36'22" EAST, ALONG A LINE 46.20 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID TRACTS 66 THROUGH 71, A DISTANCE OF 1,980.00 FEET; THENCE SOUTH 00°23'24" EAST ALONG THE EAST LINE OF SAID TRACTS 66, 95, 98 AND 127, A DISTANCE OF 2,624.76 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH:

A PORTION OF TRACTS 2 THROUGH 6, 27 THROUGH 31, 34 THROUGH 38, 59 THROUGH 63 AND A PORTION OF A ROAD, DYKE AND DITCH RESERVATION, 30.00 FEET IN WIDTH, ALL LYING WITHIN BLOCK 59, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, OF THE PUBLIC RECORDS, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID TRACT 2; THENCE SOUTH 00°26'28" EAST ALONG THE EAST LINE OF SAID TRACTS 2, A DISTANCE OF 35.64 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00°26'28" EAST, ALONG THE EAST LINE OF SAID TRACTS 2, 31, 34 AND 63, A DISTANCE OF 2,635.42 FEET; THENCE SOUTH 89°36'33" WEST, ALONG THE SOUTH LINE OF SAID TRACTS 59 THROUGH 63, A DISTANCE OF 1,409.23 FEET; THENCE NORTH 10°41'03" WEST, A DISTANCE OF 409.40 FEET TO THE POINT OF CURVATURE OF A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 3,460.00 FEET; THENCE NORTHERLY, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 15°25'19", A DISTANCE OF 931.31 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 32.00 FEET; THENCE NORTHEASTERLY, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 50°42'29", A DISTANCE OF 28.32 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 80.00 FEET; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 98°59'39", A DISTANCE OF 138.22 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 32.00 FEET; THENCE NORTHERLY, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 50°01'59", A DISTANCE OF 27.94 FEET TO A POINT OF TANGENCY; THENCE NORTH 06°29'05" EAST, A DISTANCE OF 1,014.58 FEET TO THE POINT OF CURVATURE OF A CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 1,653.00 FEET; THENCE NORTHERLY, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 04°26'10", A DISTANCE OF 127.99 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT LINE; THENCE NORTH 89°36'36" EAST, ALONG A LINE 35.64 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID TRACTS 2 THROUGH 6, A DISTANCE OF 1,371.16 FEET TO THE POINT OF BEGINNING.

CONTAINING A TOTAL OF 201.941 ACRES, MORE OR LESS.

EXHIBIT "B"**DISCLOSURE OF OWNERSHIP INTERESTS IN 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.

1. Itzhak Ezratti, having an address of 1600 Sawgrass Corporate Parkway, Suite 400, Sunrise, Florida 33323.

2. Maya Ezratti, individually and/or through trusts for her interests, having an address of 1600 Sawgrass Corporate Parkway, Suite 400, Sunrise, Florida 33323.

3. Misha Ezratti, individually and/or through trusts for his interests, having an address of 1600 Sawgrass Corporate Parkway, Suite 400, Sunrise, Florida 33323.

4. Maxie Ezratti, individually and/or through trusts for her interests, having an address of 1600 Sawgrass Corporate Parkway, Suite 400, Sunrise, Florida 33323.

5. AmFin Financial Corporation (f/k/a AmTrust Financial Corporation) having an address of c/o Mr. Ronald Glass, GlassRatner Advisory and Capital, 3391 Peachtree Road, Suite 110, Atlanta, Georgia 30326, a debtor under Bankruptcy Case No. 09-21323 pending in the United States Bankruptcy Court for the Northern District of Ohio, through its wholly owned subsidiary, Amtrust Real Estate Investments, Inc.

**Trails at Canyon AGR-PUD
(FKA Acme East AGR-PUD)
Control Number: 2006-550**



**JUSTIFICATION STATEMENT
Type II Stand Alone Variance**

Submitted: April 18, 2012

**Urban Planning and Design
Landscape Architecture
Communication Graphics**

Request

Urban Design Kilday Studios, as agent for Boynton Beach Associates, XXIII, LLLP By: Boynton Beach XXIII Corporation, the general partner (aka GL Homes), the owner/developer, is requesting a variance from Article 3.D.1.A / Table 3.D.1.A of the Palm Beach County Unified Land Development Code (PBC ULDC) for the Trails at Canyon AGR-PUD. This variance seeks relief from the Building Coverage requirement for single story Single Family units from 40% to 44%. This variance request would apply to single story Single Family units within PODS D and E of the Final Master Plan, which PODS are the affected area.

The variance request is described in the following Table:

ULDC Code Section	Required	Proposed	Variance
Article 3.D.1.A / Table 3.D.1.A	Building Coverage 40% - all units	Building Coverage 44% - single story units only. Two story units capped at 40%.	10% Variance

Property Location

The subject project consists of 579.41 total acres of land, which includes the development parcel and the associated preserve properties. The development parcel is located south of Boynton Beach Boulevard, east of and adjacent to Acme Dairy Road, and west of and adjacent to Florida’s Turnpike. Access to the property is by Acme Dairy Road.

The adjacent properties to the west across Acme Dairy Road are approved AGR-PUDs known as Canyon Lakes, Canyon Isles, and Canyon Springs. The LWDD L-25 Canal is to the north, and to the south is a 50% reduced AGR Buffer (25 feet) and the LWDD L-27 Canal. To the east of the property is a 50-foot AGR buffer and the Florida’s Turnpike.

Project History

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LCC000035**

The subject site is zoned Agricultural Reserve Planned Unit Development (AGR-PUD) and has a future land use (FLU) designation of Agricultural Reserve (AGR). The site is located within the Agricultural Reserve (AGR) Tier of the Palm Beach County Managed Growth Tier System and within the boundaries of the West Boynton Community Plan. The subject site is not within the future annexation area of any municipality.

- On June 28, 2007, the Palm Beach County Board of County Commissioners (PBC BCC) approved a rezoning from the Agricultural Reserve (AGR) Zoning District to the Agricultural Reserve Planned Unit Development Zoning District (AGR-PUD) for 579 residential family dwelling units via Resolution Number R-2007-1041. Also at this hearing, the BCC approved a waiver of Article 3.E.1.C.2 relative to the restriction of cul-de-sacs within a community, more specifically to allow more than 25% of the local streets to terminate in a cul-de-sac or dead-end via Resolution Number R-2007-1042.
- On October 23, 2008, the BCC approved a Development Order Amendment (DOA) to delete a condition of approval (Planning Condition #2) via Resolution Number R-2008-1961. This deleted condition was to plat the preserve parcels associated with this AGR-PUD.
- On February 4, 2009, the BCC approved a corrective Resolution via Resolution Number R-2009-0012 to include missing conditions from the previous Resolution Number R-2008-1961.
- On July 23, 2009, the BCC approved a corrective Resolution via Resolution Number R-2009-1226 correcting a legal description associated with one of the preserve parcels within the AGR-PUD for the previous Resolution Numbers R-2007-1041, 2007-1042 and 2008-1961.
- On February 24, 2011, the BCC approved a Development Order Amendment/Expedited Application of Consideration (DOA/EAC) via Resolution Number R-2011-0224 to modify Engineering conditions in the AGR-PUD zoning district.

The Final Master Plan for Trails at Canyon AGR-PUD was approved by Final DRO on November 10, 2009. Subsequently, Zoning Review and Agency Review applications have been approved in 2010 and 2011 for minor revisions to the site design. The Final Master Plan is Exhibit #35 approved via Agency Review on January 12, 2012.

The gross land area for Trails at Canyon AGR-PUD is 579.41 acres. There are 579 approved dwelling units, resulting in a gross density of 1 unit/acre. The project is comprised of 201.94 acres of development area and 377.47 acres of preservation area. The preservation area is 65.1% while the development area is 34.9%. The preservation area consists of 377.47 acres within five (5) separate parcels that are not contiguous with the Development Area. These preserve parcels and their locations are depicted on the Master Plan. All the preservation parcels lie within the AGR future land use designation and are

restricted for agricultural purposes or wetlands. Conservation Easements have been recorded on each of the preserve parcels as required by the ULDC and the conditions of approval.

The required perimeter landscape buffers have been provided around the entire boundary of the property. The western property line abutting Acme Dairy Road includes a 50 foot wide buffer tract. The north property line abuts the LWDD L-25 canal with a combined right-of-way width of 80 feet or greater, thus allowing a 50% reduction in the required 50 AGR perimeter buffer per ULDC Article 7.F.6. The eastern property line abuts Florida's Turnpike and provides for a 55 foot wide buffer tract with 5 feet of open space within said buffer tract. The south property line abuts the LWDD L-27 canal, which is 80 feet in width allowing for a 50% reduction in the required 50 feet AGR perimeter buffer requirement.

Concurrency for this project is vested under the existing Development Order approved under Resolution R-2008-1961 for 579 residential dwelling units.

Overview of Variance Request and Justification Statement

The overall AGR-PUD consists of six plats, four of which are within the northern parcel and have been recorded. These four Plats are known as Trails at Canyon Plat One; Trails at Canyon Plat Two; Trails at Canyon Plat Three; and Trails at Canyon Plat. Development of these parcels has already commenced. This variance request affects PODS D and E, which are in Plats Five and Six. The property control number for Plats Five and Six is 00-42-43-27-05-059-0021. Plat 5 received Subdivision Plan approval as Exhibit 42, most recently revised on March 19, 2012. The Subdivision Plan for Plat Six is currently under review by the DRO (Application # DRO-2012-0698).

This variance request is to deviate from the Building Coverage requirement of 40% to allow up to 44% coverage for single story Single Family units only. This request only applies to the single family lots in POD D and POD E, which are known as the affected area. POD D is located in Plat Five and POD E is located in Plat Six. The variance affects only 57 Single Family lots, specifically 27 units in POD D and 30 units in POD E.

The Trails at Canyon, is planned as a moderate-scale family community with pricing starting around \$275,000 up to the \$550,000 price range. The proposed residential unit and site design is comparable to Canyon Lakes, Canyon Isles, and Canyon Springs across Acme Dairy Road. These communities have been successful and attractive to family buyers who need multiple bedrooms, family areas and garages for their families.

The justification for this variance is based on three factors: (1) the precedent of similar building coverage deviations having been permitted within existing AGR-PUD developments in proximity to Trails at Canyon; (2) the ability to produce and sell single story units with sufficient square footage to help mitigate the so-called "canyon effect" wherein two story units dominate the streetscape; and (3) all units, inclusive of single story units granted additional building coverage (if approved) adhering to all other code required setbacks.

File No.09-083.001

Trails at Canyon AGR-PUD
Type II Stand Alone Variance Justification Statement
Page 3 of 8

April 18, 2012

Precedent:

Trails at Canyon is a 60/40 AGR-PUD located within the Agricultural Reserve area (AGR Reserve Tier), generally south of Boynton Beach Boulevard, east of and adjacent to Acme Dairy Road and west of and adjacent to Florida's Turnpike. To the west of this project there are three other 60/40 AGR-PUDs, which have been approved and built. These three projects are Canyon Lakes (a.k.a. Fogg North, Control #2002-00067), Canyon Isles (a.k.a. Fogg Central, Control #2002-00068) and Canyon Springs (a.k.a. Fogg South, Control #2002-00069).

There are two other residential developments in the same geographic area of Trails at Canyon that are also 60/40 AGR-PUDs. Valencia Reserve (a.k.a. Lyons West, Control #2005-003) is located just west of Canyon Lakes, which is currently under construction. The other project is Amestoy AGR-PUD (Control #2005-00162) located just north of Boynton Beach Boulevard which is currently vacant with a current DOA in process (Application Number W/DOA-2012-00379). A charter school is also proposed on Boynton Beach Boulevard, contiguous to the Amestoy AGR-PUD, which will make this project more attractive to family buyers.

Canyon Lakes, Canyon Isles, and Canyon Springs were all approved during a time wherein the ULDC permitted "Flexible Regulations" [aka "Flex Regs", ULDC Section (at the time) 6.8.A.4]. Each of these projects obtained approval for Flex Regs that included a Building Coverage deviation of 10% for units on 70' and 80' wide Single Family lots, whereby these Single Family units were permitted a maximum building coverage of 44%. Pods D and E at Trails at Canyon will contain 70' wide single family lots. Trails at Canyon is requesting that the same building coverage that was administratively approved for Canyon Lakes, Canyon Isles and Canyon Springs (on both the 70' and 80' wide lots) be permitted for Pods D and E in Trails at Canyon (on 70' wide lots), except that the requested building coverage deviation would apply to only the single story Single Family units. These communities developed quickly and were very popular with families due to the flexibility of the floor plans, which were a direct result of the Flex Regs and increased Building Coverage. The units proposed at Trails at Canyon are similar in design and size to those in the surrounding communities and allowing for a similar building coverage deviation is appropriate.

The ULDC was amended to remove the Flex Regs for AGR-PUDs prior to the Trails at Canyon project obtaining its initial Development Order. In 2010, the ULDC was amended (Ordinance 2010-005), Section 5.G.1.E.4.h.(1).(3), to provide a ten percent (10%) deviation for building coverage associated with Workforce Housing Program ("WHP") projects only. The WHP program does not apply to the Agricultural Reserve Area.

2 Story Streetscape (mitigating the "canyon effect"):

As the largest residential developer in Palm Beach County, with numerous built projects having been completed in the Palm Beach County market, GL Homes has attempted to

control the so-called “canyon effect” in many ways. The “canyon effect” occurs when the predominance of units sold are two story units, thereby creating a streetscape dominated by two story units. These controls include offering single story units for sale within each residential development pod, alternative building facades for two story units, strategically placed open spaces, and multiple coloring options (roof, base and trim).

Single story units provide the most effective solution to the “canyon effect”. Trails at Canyon is promoting similar product types in relation to the Canyon Lakes, Canyon Isles, and Canyon Springs residential developments. These projects are immediately west of Acme Dairy Road from the proposed development area. The three Canyon projects also have a moderate price range for the single story and two story units. Having the ability to build larger single story footprints will allow a more attractive unit to the buyer, as it will provide additional square footage while keeping to a single story footprint. Having attractive single story units will result in the sale of more single story units, and thus provide a natural mitigation to the “canyon effect”.

Adherence to all other setbacks:

The owner/developer is not seeking variance relief to any other code required setbacks. The proposed units will still be required to adhere to the code mandated front, side, side street and rear setbacks, even if the building coverage variance is approved. The variance requested is to allow a larger building footprint within the confines of the ULDC adopted usable building footprint after adherence to the required setbacks, and again only for single story units. The Flex Regs previously allowed by the ULDC and approved for the surrounding communities also allowed for deviations to building setbacks. This condition will not occur at Trails at Canyon.

The Final Master Plan and Regulating Plan for Trails at Canyon AGR-PUD is included in the application reflecting the proposed variance chart and the Property Development Regulations Chart reflecting the proposed 44% building coverage request for single story Single Family units. The Final Subdivision Plans for Plats Five and Six are also being submitted to reflect the proposed variance chart and Property Development Regulations Chart.

Variance Criteria

Section 2.B.3.E. of the Palm Beach County ULDC states that in order to authorize a variance, the Palm Beach County Zoning Commission shall and must find that the seven criteria listed below have been satisfied. The criteria for each variance request follows.

- 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 zoning district:**

File No.09-083.001

Trails at Canyon AGR-PUD
Type II Stand Alone Variance Justification Statement
Page 5 of 8

April 18, 2012

A special circumstance exists. The existing Canyon Lakes, Canyon Isles, and Canyon Springs projects across the street were approved as 60/40 AGR-PUDs with Flex Regs that allowed the Building Coverage to be 44% for single family units (70' and 80' wide lots). The applicant is seeking the same 44% building coverage for single story single family units only in Trails at Canyon (70' wide lots).

GL Homes is the developer of Valencia Reserve (a.k.a. Lyons West PUD) located at the southwest corner of Lyons Road and Boynton Beach Blvd. This is a 1,043 unit approved and actively under construction project (over ½ of the units sold to date), which is an adult restricted (55 and older) with only single story units for sale. Like Trails at Canyon, Valencia Reserve was approved after the removal of Flex Regs from the ULDC and is therefore restricted to 40% lot coverage for single family units. However, unlike Trails at Canyon, Valencia Reserve did not seek variance relief from the ULDC mandated lot coverage. This is due to the fact that Valencia Reserve is an adult restricted community and those buyers are typically retired with 1 to 2 individuals occupying the units. Therefore, they do not desire nor need the square footage of the family buyer. Family buyers are looking for sufficient square footage to accommodate the children's bedrooms, playrooms, office/den work space, guest bedrooms, and etc. The adult buyer simply does not have the need for this space and therefore there was no need to achieve higher home square footage through a lot coverage deviation. The end product for Valencia Reserve did not need the lot coverage relief based on the product type proposed. But as Trails at Canyons is being targeted for a family buyer, the building coverage variance is needed to allow the same flexibility of development as was permitted for the projects across the street.

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

Special circumstances and conditions are not the result from the actions of the applicant, in contrary they are circumstances that are market driven in an effort to meet the needs of the home buyers by offering viable single story floor plan options. As noted earlier, the owner/developer could easily meet the 40% lot coverage on all units, but the resulting single story product would likely not sell. This would result in a significant number of two story units dominating the streetscape, asserting the "canyon effect". The removal of Flex Regs that would apply in the AGR tier are not the result of the applicant and only allowing the 10% building coverage deviation to apply to WHP projects in the Urban/Suburban tier was not the result of the applicant as well. The fact that the three neighboring 60/40 AGR-PUDs were approved and built utilizing Flex Regs including a 10% deviation for building coverage is not the result of actions of the applicant.

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

The granting of this variance does not confer any special privilege denied by the comprehensive plan and the ULDC to other parcels of land in the same zoning district and will not be disruptive to the surrounding area. The variance request is simply providing future home buyers the opportunity to choose from more floor plans and elevations with the desired goal of having more viable single story floor plans and a diverse streetscape. As mentioned previously, the approval of the variance will confer upon the applicant the same privilege that has already been approved for other neighboring built 60/40 AGR-PUDs, Canyon Lakes, Canyon Isles and Canyon Springs. All three projects have been successful and there is no indication that the increased building coverage has resulted in any adverse impacts on the residents or site development. For many years, Flex Regs were allowed to be approved administratively at the time of site plan approval and many projects enjoyed the flexibility of development afforded by the increased building coverage, include the opportunity to provide additional ground floor area and covered patios.

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 zoning district, and would work an unnecessary and undue hardship:

As previously mentioned, the approval of the variance will confer upon the applicant the same privileges that have already been approved for other 60/40 AGR-PUDs in the same geographic area, including Canyon Lakes, Canyon Isles and Canyon Springs across the street. The communities were permitted to develop at 44% building coverage for single family homes, including both single story and two story units (for 70' wide and 80' wide lots). The applicant is only seeking to allow 44% building coverage for single story single family units only in Pods D and E only, which consists of 70' wide single family lots.

The granting of the variance would provide a greater diversity in the community by providing flexibility for additional floor plans, covered patios, and accessory structures for buyers to choose from and will provide a viable single story option to purchasing a two story product, thereby reducing the possibly of the "canyon effect". As there is no variance requested to any setback requirement, the same amount of separation between units will be provided.

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

The granting of the variance is the minimum necessary to make possible the reasonable use of the parcel to accommodate a viable and flexible single story single family product. This request allows the applicant the flexibility to adjust product type over time, to offer covered patios and to adjust to the needs of the buyer. For many years, a 10% deviation in Building Coverage was routinely approved administratively for similar projects such as the developments across the street. A 10% deviation is minor and minimal, and will allow for greater flexibility in building design and thus a reasonable use of the parcel. Additionally, the variance will apply to a maximum of 57 single family lots out of the overall 579 units in the AGR-PUD. This results in a maximum of 10% of the units being granted the additional flexibility for building coverage, which is a minimal variance.

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

The granting of the variance will be consistent with the goals and objectives of the comprehensive plan and the code as the request would provide a greater diversity of unit types and design in the community by allowing buyers additional models to choose from and to minimize the number of two story products to reduce the possibility of the "canyon effect." As there is no variance or deviation requested for building setbacks, there will be no reduction in the amount of open space surrounding the units and on the lots, including providing the same separation from the street and adjacent units.

7. The granting of this variance will not be injurious to the area involved or otherwise detrimental to the public welfare:

The granting of this variance will not be injurious to the area involved or otherwise detrimental to the public welfare. By not deviating from the setback requirements in the code, the maximum 57 lots affected by this variance request will not move any closer to any surrounding properties or the right-of-way. Many of the lots abut water management tracts. Therefore, the increased building coverage will not be in any way detrimental to the public welfare.

On behalf of the petitioner, Urban Design Kilday Studios respectfully request approval of this request. The Project Managers at Urban Design Kilday Studios are Collene Walter and Shayne Broadnix, and can be reached at 561-366-1100.

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