

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



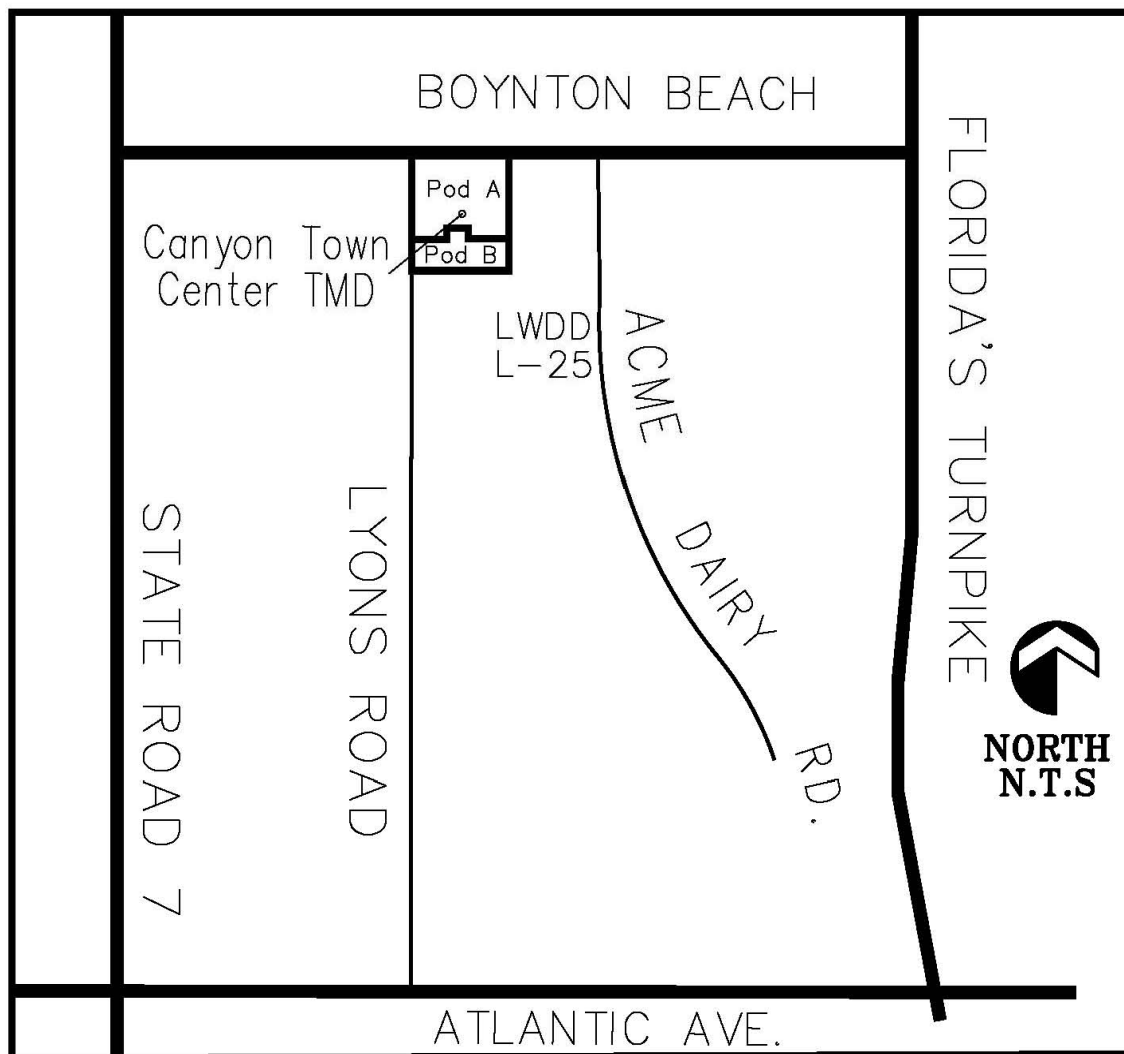
**ZONING COMMISSION VARIANCE
STAFF REPORT
5/7/2009**

APPLICATION NO.	CODE SECTION	REQUIRED	PROPOSED	VARIANCE
ZV-2009- 00991	3.F.4.D.10.b.1). Phasing - First Phase	In the First Phase the following elements shall be constructed before the issuance of the first CO: All plazas and squares located on required main streets, including required landscaping.	To allow construction of Plaza #2, including required landscaping after the issuance of certificate of occupancies.	To allow construction of Plaza #2, including required landscaping after the issuance of certificate of occupancies.
SITUS ADDRESS:	10060 Lyons Rd Boynton Beach 33473 8794 Boynton Beach Blvd Bldg A2 Boynton Beach 33473 8788 Boynton Beach Blvd Bldg B2 Boynton Beach 33473 10110 Lyons Rd Bldg A3 Boynton Beach 33473 8756 Boynton Beach Blvd Bldg O1 Boynton Beach 33473 8760 Boynton Beach Blvd Bldg C1 Boynton Beach 33473 8768 Boynton Beach Blvd Bldg C2 Boynton Beach 33473 8790 Boynton Beach Blvd Bldg B1 Boynton Beach 33473 8962 Boynton Beach Blvd Boynton Beach 33473			
AGENT NAME & ADDRESS:	Shayne Broadnix Urban Design Kilday Studios 477 S Rosemary Ave West Palm Beach FL 33401			
OWNER NAME & ADDRESS:	Beach Boynton Associates XVIII, LLLP. 1401 University Dr Pompano Beach FL 33071			
PCN:	00-42-45-29-09-001-0010			
ZONING DISTRICT:	AGR TMD			
BCC DISTRICT:	05			
PROJECT MANAGER:	Monica Cantor, Site Planner II			
LEGAL AD:	ZV-2009-00991 <u>Title:</u> Resolution approving a Type II Zoning Variance application of Boynton Beach Associates XVII by Urban Design Kilday Studios, Agent. <u>Request:</u> to allow construction of Plaza #2 including required landscaping after the issuance of any certificate of occupancies. <u>General Location:</u> Southeast Corner of Lyons Road and Boynton Beach Boulevard (CANYON TOWN CENTER TMD) (2004-00471)			

LAND USE:	CL/AGR	S/T/R: 29-45-42	
CONTROL #:	2004-00471		
LOT AREA:	37.55 acres +/- (Development Area)		
LOT DIMENSIONS:	Approximately 1,320 feet by 1,249 feet (Development Area)		
CONFORMITY OF LOT:	Yes	CONFORMITY OF ELEMENT:	None
TYPE OF ELEMENT:	Plaza #2	ELEMENT SIZE:	0.39 acres
BUILDING PERMIT #:	None	NOTICE OF VIOLATION:	None
CONSTRUCTION STATUS:	The following buildings are constructed on the site: in Pod "A" building A2, B2, C1, C2, D1, D2, D3, and plazas #1 and #3; in Pod "B" amphitheatre along with temporary multi-purpose field.		
APPLICANT REQUEST:	to allow construction of Plaza #2 including required landscaping after the issuance of any certificate of occupancies.		

EXHIBIT

**PALM BEACH COUNTY
VICINITY SKETCH / ZONING**



Petition No.: 2004-471
Zoning Quad Page: 50
Date: 03.18.09



Figure 1 Vicinity Sketch



ZONING APPLICATION
 Control 2004-00471 (ZV-2009-00991)

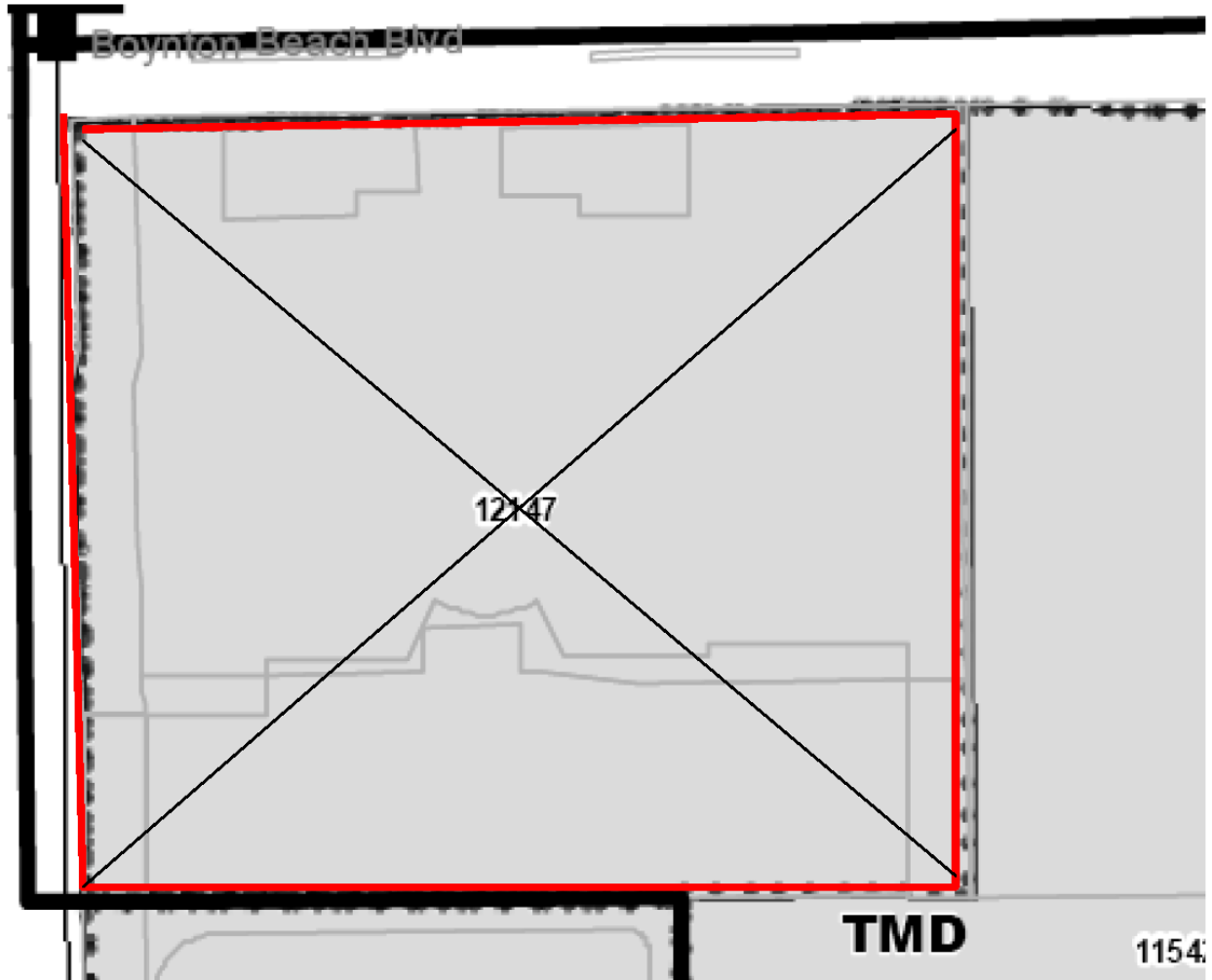
PROJECT NAME
 Canyon Town Center TMD

Planning, Zoning and Building
 Department - GIS

2300 N. Jog Road
 West Palm Beach, FL 334011
 (561) 233-5000
 pzmap@co.palm-beach.fl.us
 www.pb.gov.compz

Figure 2 Aerial Picture

PALM BEACH COUNTY ZONING QUAD/VICINITY SKETCH



Application No. ZV-2009-0991
Zoning Quad 50



Figure 3 Zoning Quad Map

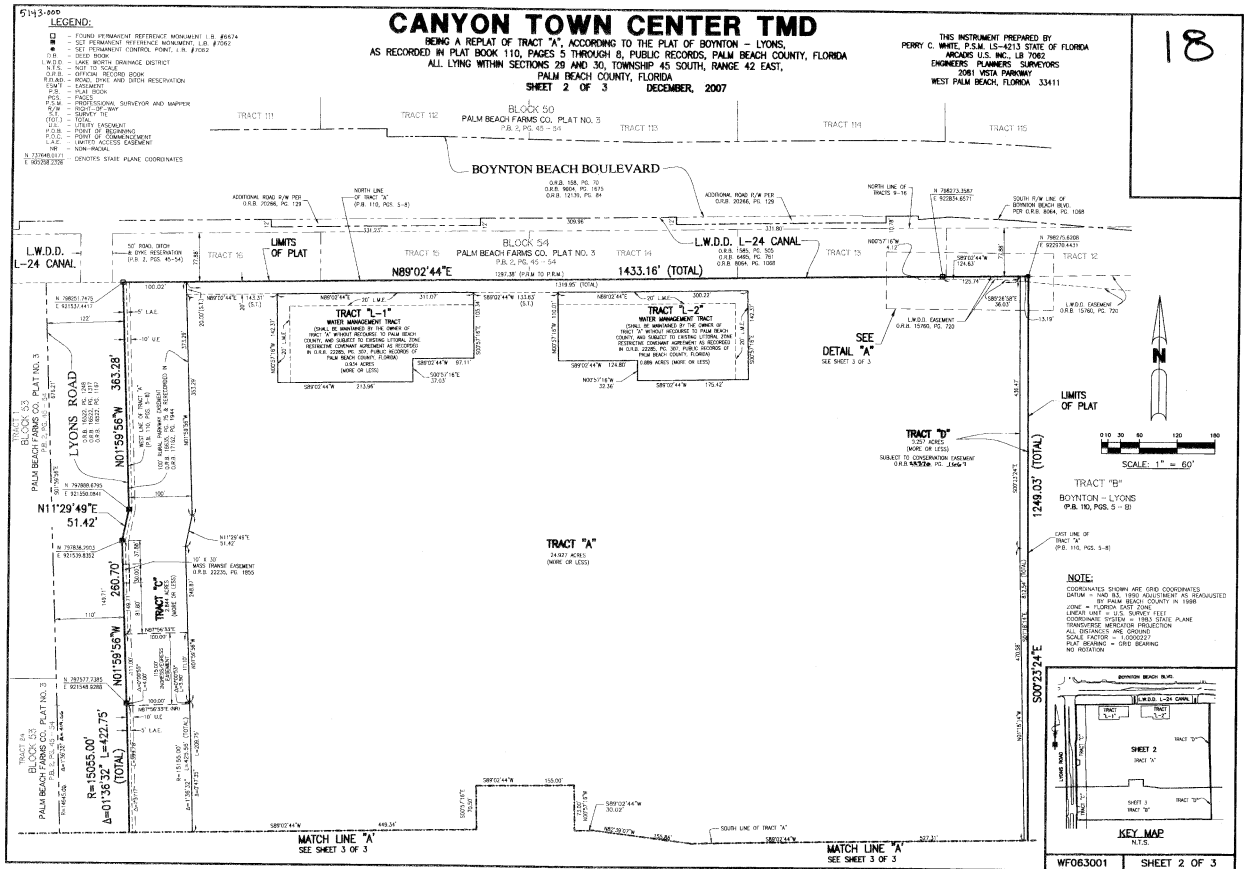


Figure 4 Plat - Pod A

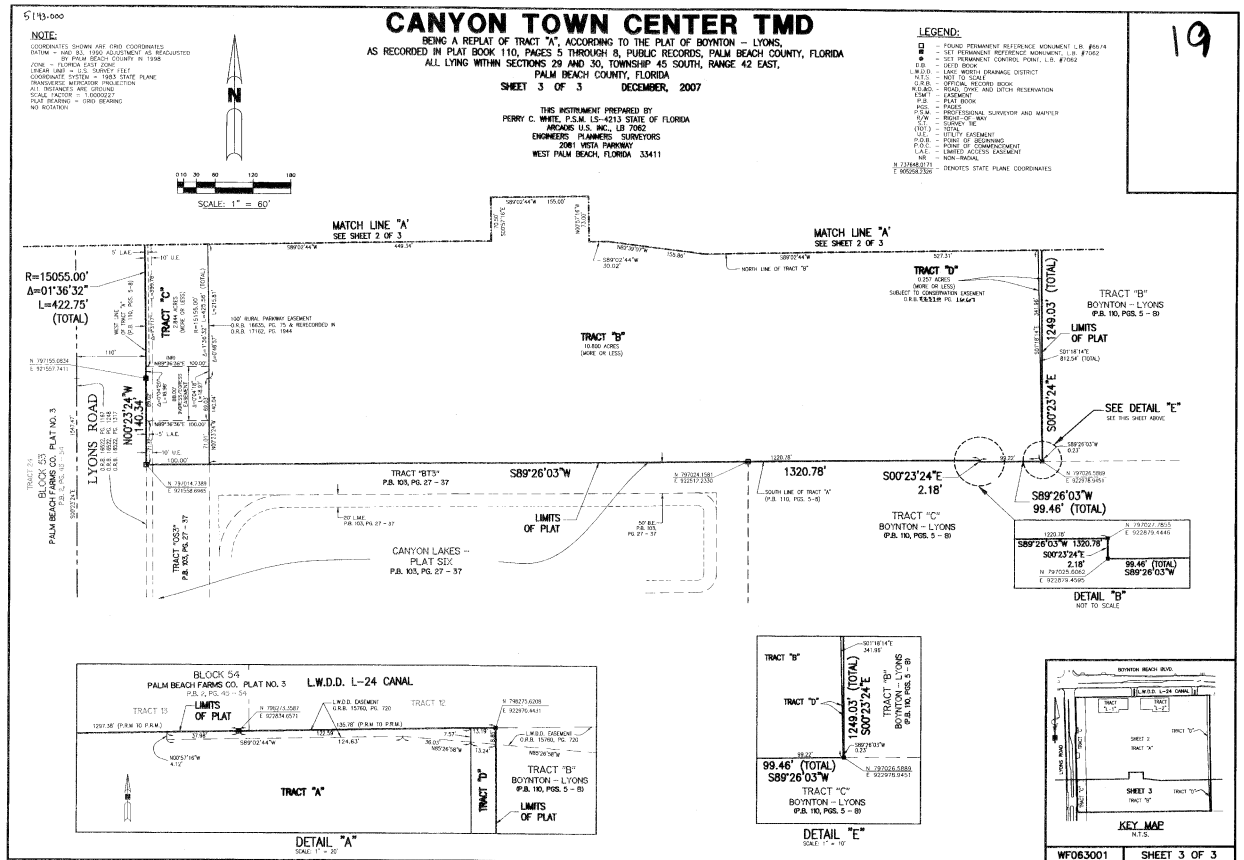
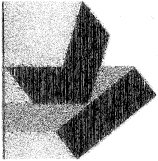


Figure 5 Plat - Pod B



Landscape Architects / Planners
 Kibby & Associates, Inc.
 1550 Bayshore Drive
 Suite 100
 Palm Beach Gardens, FL 33418
 Phone: (561) 995-8822
 Fax: (561) 995-8823
 The following is an acknowledgment of the professional services provided by Kibby & Associates, Inc. under the terms of the contract dated 01/15/09.

CANYON TOWN CENTER TMD
 Site Plan - POD A

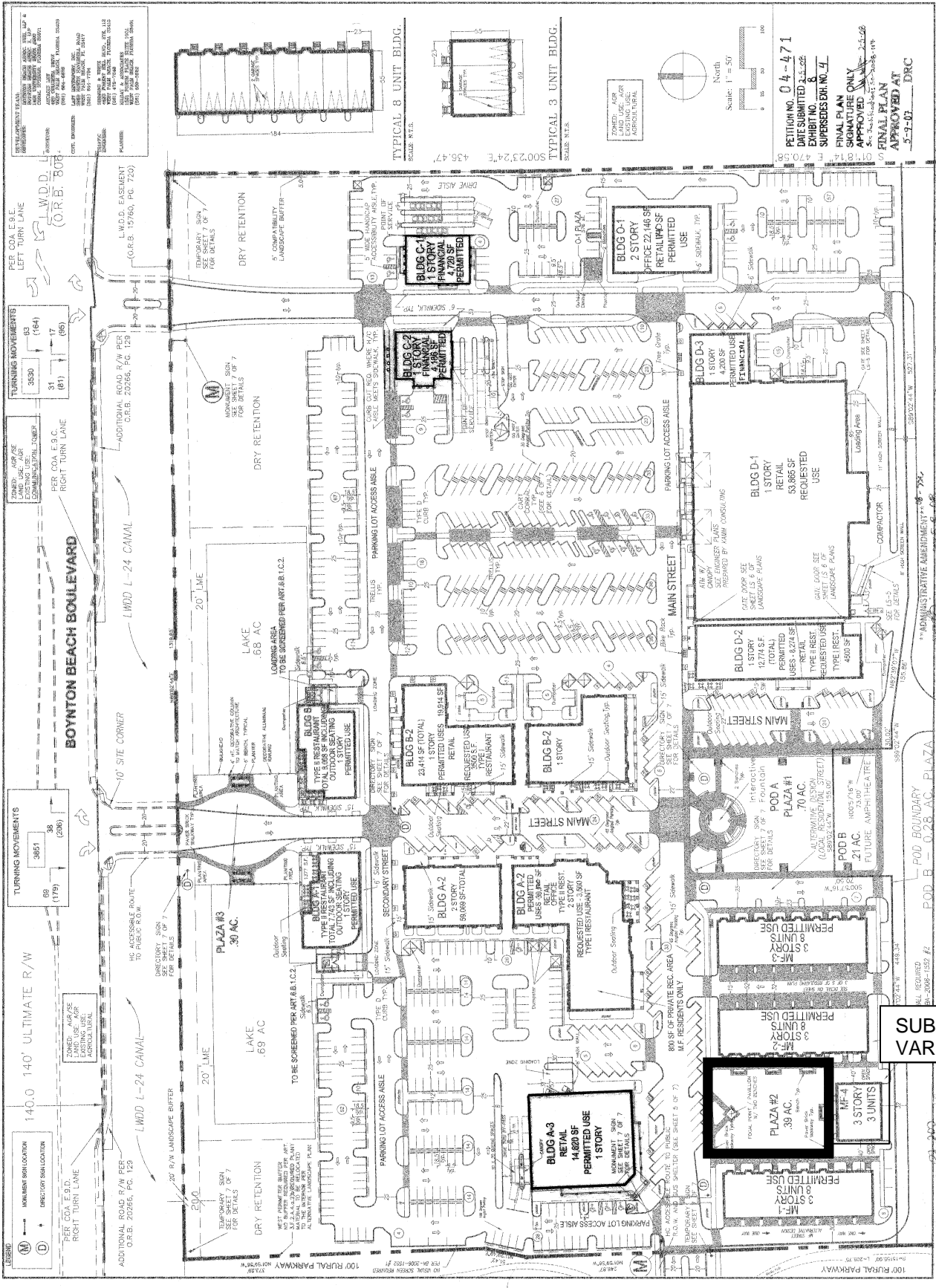
PALM BEACH COUNTY, FLORIDA

Scale: 1" = 50'
 Date: 11-19-04
 Design By: CM
 Check By: TW
 Title No. 10043R
 Drawing No. 04-31

REVISIONS / DIMENSIONS
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Site Plan - POD A

2 of 7



SUBJECT OF VARIANCE

Figure 6 Final Site Plan - Pod A

STAFF SUMMARY

TYPE II ZONING VARIANCE REQUEST

The applicant, Boynton Beach Associates XVIII, LLLP, is requesting a variance to allow construction of Plaza #2, including required landscaping, after the issuance of any certificate of occupancies. The Unified Land Development Code (ULDC) requires that all plazas and squares located on required main streets, including required landscaping shall be constructed prior to the issuance of the first certificate of occupancy (CO) for any building in the Traditional Marketplace Development (TMD). The variance is being sought to allow issuance of certificates of occupancy for the Traditional Marketplace Development building permits prior the construction of Plaza #2. Plaza #2 is intended to serve the multi-family buildings located at the southwest corner of Pod A which the applicant is not proposing to construct at this time due to decline in residential market.

GENERAL LOCATION, PREVIOUS APPROVALS AND EXISTING CONDITIONS

The subject site is located on the southeast corner of Boynton Beach Boulevard and Lyons Road within the Agricultural Reserve Traditional Marketplace Development AGR TMD zoning district. The Canyons Town Center TMD is 125.81-acre development of which 37.55-acre constitutes the development area and the remaining 88.26-acre is the preserve area. The 37.55-acre development was approved with 2 pods; Pod "A" of 26.75-acre and Pod "B" of 10.80-acre.

An amendment was adopted on August 25, 2005 for this parcel to change the Future Land Use (FLU) designation from Agricultural Reserve (AGR) to Commercial Low/Agricultural (CL/ AGR). Also on August 25, 2005 the Board of County Commissioners (BCC) approved Petition 2004-471 to rezone the parcel from Agricultural Reserve (AGR) zoning district to the Agricultural Reserve Traditional Marketplace Development (AGR- TMD). The application was approved for two requested uses one to be a Day Care Center, General and a single tenant exceeding 25,000 square feet. Later, on February 22, 2007 a Development Order Amendment was approved to reconfigure the site plan and to obtain waivers for the block structure and main street regulations. The approval was granted by Resolutions No. R-2007-0230, R-2007-0231, R-2007-0232, and R-2007-0233 and the development received final approval for the Master Plan and Pod "A" on May 9, 2007 while Pod "B" final site plan approval was on April 9, 2008 .

The present site configuration incorporates in Pod "A" 15 commercial buildings including requested use Restaurant Type I, 3 plazas, 4 multi-family buildings with 27 units, and 12 multi-family units on the second floor of commercial building A-2, while Pod "B" consist of civic uses together with 54 multi-family units. The site currently has constructed 7 of the 15 commercial buildings in Pod "A" and amphitheatre located adjacent to Plaza #1 of Pod "A" along with temporary multi-purpose field in Pod "B".

ULDC REQUIREMENTS

The ULDC requires only one development phase in the AGR-TMD. When the two AGR-TMDs were approved by the Board of County Commissioners (BCC) both had proposed residential units to be constructed. With the recent decline in the residential market, the developers are requesting to phase the developments into two phases: Phase I non-residential, Phase II residential component. This request will result in the Zoning Division proposing an amendment to the ULDC in Round 2009-01. However, until that amendment is approved by the Board of County Commissioners (BCC) in October 22, 2009 the developer is requesting consideration to continue development the non-residential component and receive certificates of occupancy before all required plazas are constructed per code.

The Canyon's TMD has currently received several certificates of occupancy by the County in conflict with the code. The Zoning Director requested the developer to submit a Performance Bond to allow the existing/future certificates of occupancy until the variance and/or the ULDC is amended to allow two phases. This variance will recognize the hardship the developer is facing due to residential market decline and the need to continue construction on the non-residential portion of the TMD.

COMPATIBILITY WITH SURROUNDING AREA

The subject property located on the southeast corner of Lyons Road and Boynton Beach Boulevard is immediately adjacent to Lake Worth Drainage District (LWDD) L-24 Canal to the north, Palm Beach County elementary school to the east, single family residential Canyons Lakes Agricultural Planned Unit Development (AG-PUD) to the south, and a 100-foot rural parkway to the west.

This site is designated as a Traditional Marketplace Development (TMD). Based on Article 3.F.4.A.1 and Article 3.F.4.A.2 of the Palm Beach County Unified Land Development Code (ULDC) TMD needs to provide a concentrated area for shopping, entertainment, business, services and cultural opportunities by allowing a mix of commercial and institutional uses and establishing physical development and design standards that create pedestrian-oriented development that also provide housing opportunities through vertically integrated residential uses. The development was approved for a total of 93 multi-family units and 243,806 square feet combined Pod "A" and "B".

The parcels adjacent to the AGR TMD are mainly residential uses and more particular to the northwest was approved Amestoy Agricultural Planned Unit Development (AG-PUD), to the west Lyons West AGR-PUD, to the south is the existing Canyons Lakes AGR-PUD, and to the east is a portion of the preserve area of this TMD that now supports an elementary school. The AGR-TMD and all adjacent uses are compatible to each other.

FINDINGS OF FACT

The Unified Land Development Code (ULDC) in article 3.F.4.D.10.b.1) requires that all plazas and squares located on required main streets, including required landscaping shall be constructed before the issuance of the Traditional Marketplace Development (TMD) first certificate of occupancy (CO).

In order to comply with the code requirement and for additional buildings to receive certificate of occupancy, it would be necessary to start construction of the Plaza #2 immediately, unless applicant request variance to article 3.F.4.D.10.b.1) and receives Zoning Commission approval.

In addition, the Time Limitation of Development Order for Each Phase or table 2.E.3.E. of the ULDC only allows Traditional Marketplace Development (TMD) located in the Agricultural Tier to be developed in one phase. This requires the site to have all the buildings constructed within one phase and a specific time frame. As previously stated, Zoning staff is proposing a ULDC code amendment to allow two phases for the AGR-TMD's development in 2009-01 Round. However, until this amendment is processed, the developer cannot get additional certificates of occupancy on the non-residential portion of this site until Plaza #2 is constructed. This will place a significant hardship on both AGR-TMD developments since the plaza is an integral part of the residential portion of the TMD and not the non-residential portion. The developer has advised staff constructing the plaza at this time would result in possible damage to it once the residential units are constructed due to site layout.

In Pod "A" Plazas #1 and #3 are located along the main street where the commercial activity is concentrated and where most of the buildings have been constructed already. On the other hand, Plaza #2 which is intended to serve the multi-family buildings that surround it, abuts to the north with the main street that runs east-west. The current decline in residential market has delayed the construction of the multi-family units and the associated Plaza #2.

Building B2, C1, C2, D1, D2, and D3 already has received several certificates of occupancy from the County without constructing Plaza #2. The site still has 8 remaining buildings to be constructed in Pod "A" besides the civic buildings in Pod "B". Building A2 in Pod "A" is expecting to get CO in the near future since it is already constructed.

The applicant, Boynton Beach Associates XVIII, LLP at the Zoning Director request has provided a Performance Bond No.929464676 from The Continental Insurance Company for \$ 59,138.46 to Palm Beach County Board of County Commissioners to cover cost associated with the construction and landscape installation of Plaza #2. The bond was posted in the event that either this variance or Unified Land Development Code (ULDC) in amendment Round 2009-01 allowing phasing of the Agricultural Traditional Marketplace Development (AGR- TMD) is not approved by the Zoning Commission (ZC) and Board of County Commissioners (BCC).

Staff is recommending conditions to guarantee the construction of Plaza #2, including landscape installation prior to the first certificate of occupancy (CO) for the multi-family units, buildings MF1, MF2, MF3 and MF4 in the event the Board of County Commissioners (BCC) does not approve the ULDC 2009-01 amendment on October 27, 2009.

VARIANCE SUMMARY – CODE REQUIREMENT

A summary of the variance requested is particularly described and discussed in the standard section below as follows:

First Phase – Article 3.F.4.D.10.b.1).

The ULDC requires that all plazas and squares located on TMD main streets, including required landscaping shall be constructed before the issuance of the first CO. This code regulation is applicable to all Traditional Marketplace Development (TMD) to ensure construction of the main TMDs elements at the first phase of the development as it will contribute to meet TMD purpose. The applicant is requesting variance to allow construction of Plaza #2 including required landscaping after the issuance of any certificate of occupancies to facilitate operation of existing buildings on the site while the residential buildings get constructed.



Photo 1
Northwest view of the vacant portion of the TMD where multi-family buildings MF1, MF2, MF3, MF4, and Plaza #2 are proposed.



Photo 2
View from future location of Plaza #2 looking south towards Canyons Lakes AGR-PUD.

STAFF RECOMMENDATIONS

Staff recognizes the recent decline in the residential market and the impact on the Canyons Town Center TMD. This AGR-TMD is required to be constructed in one phase and support 93 residential units. The developer is requesting a variance to allow Plaza #2 to be constructed when the multi-family units. As previously stated the Zoning Division is processing a ULDC amendment in 2009-01 Round to allow two phases of development. Phase I, non residential is currently under construction while Phase II, by proposed code amendment language will have to be constructed within 3 years of first certificate of occupancy in Phase I. In addition, due to the fact that Plaza #2 is intended to serve the residential buildings that bound it, the construction of Plaza #2 has been delayed since the multi-family buildings are not constructed yet.

Staff recommends approval with conditions, based upon the following application of the standards enumerated in Article 2, Section 2.D.3 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.D.3.G.2 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:

YES. Plaza #2, which is intended to serve the multi-family buildings that surround it, is located on the western portion of the main streets that runs east-west in Canyon Town TMD. This portion of the development concentrates most of the residential uses proposed in Pod "A" and it is mainly secluded from the commercial uses of the Traditional Marketplace Development (TMD). All remaining plazas #1 and #3 are already constructed and are serving the commercial and civic uses they are intended to serve. The plaza is located in proximity to the residential units. As stated with the recent decline in the residential market, the developer is not proposing to construct the multi-family units until the residential market improves or the ULDC proposed amendment. However, the code still requires Plaza #2 to be constructed. The developer said constructing the plaza at this time could result in possible damage or impacts to it later when the residential units are constructed.

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

YES. The decline in the residential market has placed a hardship on the applicant that could not have been anticipated by the applicant. As consequence, the home builders have been forced to delay the new construction and the residential component of Canyons Town Center TMD is not different to the situation.

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:

YES. The granting of the variance is not conferring any special privileges to this parcel. Plaza #2 is intended to serve the multi-family buildings and such plaza will be constructed at later time when the residential multi-family buildings in Pod "A" are constructed. All additional minimum requirements to be constructed prior to the first certificate of occupancy of any of the non-residential/civic buildings have already been satisfied by applicant such as; the construction of main streets, sidewalks, landscaping and lighting needed to serve the minimum fifty percent of the required primary frontage buildings located on the main street of the TMD.

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:

YES. Canyons Town Center TMD is the first of the two AGR-TMDs constructed in the unincorporated Palm Beach County. The code requires all public improvements to be constructed prior to the

issuance of the first CO for the commercial buildings in the TMD. Plaza #2 is provided to serve the residential multi-family buildings which are not constructed yet due to the current decline in the housing market. Consequently, the compliance of this portion of the code will not allow applicant to get any COs until construction of such plaza is complete. Based on current code AGR-TMD is only allowed to be one phase development, meaning immediate compliance of the construction of Plaza #2 is essential unless a variance is granted by the Zoning Commission. Denial of the variance will delay the operation of the already constructed commercial buildings of the TMD creating an unnecessary economical and functional hardship to the development. The requested variance is in response to the special circumstances associated with the location of the main residential component in Pod "A" that is concentrated in a particular portion of the development. Constructing Plaza #2 without building the multi-family units will discount the purpose of the plaza's intent.

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

YES. The granting of the variance to allow the construction of Plaza #2 prior to the first issuance of certificate for the multi-family units will allow additional certificates of occupancy issuance for the non-residential square footage for the new uses to be located on the already constructed commercial buildings of this TMD.

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

YES. As previously stated it was anticipated and required when the two AGR-TMD code provisions were adopted that all buildings and plazas (pedestrian amenities) would be done in one phase. Until the recent decline in the residential market, the developer had anticipated construction of all public amenities prior to the first CO. There is currently no viable market demand for the proposed townhouse units, so the developer is not proposing to construct them at this time. The granting of this variance will allow Plaza #2 to be constructed in Phase II (provided the ULDC code is amended in October, 2009) when the townhouse units are built. To allow certificates of occupancy (COs) to be issued prior to construction of Plaza #2 is consistent with the Comprehensive Plan and ULDC purposes, goals, objectives, and policies since granting of the variance does not alter the content and layout of the original Canyon Town Center TMD approval.

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

YES. The mitigating circumstances creating the need to request the variance will not be disruptive to the surrounding area, all the contrary, it will be consequent to the intent of Plaza #2 which is to serve the main residential component in Pod "A" of Canyon's TMD. The granting of the variance will not be in detriment of the public or the area since it will allow Plaza #2 to be constructed later or as stated in zoning condition No. 1 to be constructed prior the issuance of the first CO for the multi-family buildings MF1, MF2, MF3 and MF4.

EXHIBIT C

ZONING COMMISSION CONDITIONS

VARIANCE

1. Prior to the issuance of the first Certificate of Occupancy for the multi-family units within buildings MF1, MF2, MF3, or MF4, the required Plaza #2 including landscaping, shall be completed and inspected by the Zoning Division (Landscape Section), unless the BCC approves the ULDC code amendment allowing two phases. (BLDG PERMIT:ZONING - Landscape)

COMPLIANCE

1. In granting this approval, the Zoning Commissioners relied upon the oral and written representations of the petitioner 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)

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 (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)