



# STAFF REPORT

## LAND DEVELOPMENT DIVISION

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**Prepared by**

Tania Ramos, Principal Planner

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**CASE NUMBER**

V24-00002

**PLANNING & ZONING BOARD HEARING DATE**

May 1, 2024

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**PROPERTY OWNER & APPLICANT**

Everly Mae Real Estate Fund LLC., Desi Humphries, Manager (Brent Howells, Build REI, LLC, and J. Wesley Mills, P.E., Mills, Short & Associates, Reps.)

**PROPERTY LOCATION/ADDRESS**

Lots 1, 2, 3, 4, and 22, Block 1983, Port Malabar Unit 40, Section 03, Township 29, Range 37, Brevard County, Florida, containing approximately 3.22 acres. Located at the southeast corner of Agora Circle SE and Thor Avenue SE. Tax Accounts 2922962, 2922963, 2922964, 2922965, and 2922986

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**SUMMARY OF REQUEST**

A **Variance** to allow a twelve (12) foot separation instead of the required thirty (30) feet between two multi-family residential buildings located on the same property as established by Section 185.038(F)(7)(e) of the Palm Bay Code of Ordinances.

**Existing Zoning**

RM-20, Multiple-Family Residential

**Existing Land Use**

HDR, High Density Residential

**Site Improvements**

Vacant Land

**Site Acreage**

Approximately 3.22 acres

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**SURROUNDING ZONING & USE OF LAND****North**

RM-20, Multiple-Family Residential; Vacant Land and Assisted Living Facility

**East**

RM-20, Multiple-Family Residential; Vacant Land

**South**

RM-20, Multiple-Family Residential and GC, General Commercial; Commercial and Multi-Family Development and Vacant Land

**West**

RM-20, Multiple-Family Residential and GC, General Commercial; Multi-Family Development and Vacant Land

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**BACKGROUND:**

The property consists of five lots combined for a total of 3.22 acres in the RM-20, Multiple-Family Residential District. The property is located at the southeast corner of Agora Circle SE and Thor Avenue SE.

Based on the RM-20 zoning and High Density Residential future land use, the maximum density for this property could be up to sixty-four (64) dwelling units. The applicant would like to develop forty-eight (48) apartment units in two buildings. A variance is requested to allow a twelve (12) foot separation instead of the required thirty (30) feet between the two buildings as required by Section 185.038(F)(7)(e) of the Palm Bay Code of Ordinances. This is a variance of eighteen (18) feet, a 60% reduction from the code requirement.

**ANALYSIS:**

Variances from the terms of the Land Development Code may be granted when special conditions exist that would result in unnecessary hardship if the provisions of the Land Development Code were enforced. However, a variance may not be granted when the public health and safety would be compromised as a result of the variance. A variance request must demonstrate that all criteria in Section 169.009(B)(1) - (7) of the Code of Ordinances have been met, as follows:

**Item 1** - *"Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, buildings or structures in the same land use category, zoning district, or situation."*

**Applicant Response:** "Our property is uniquely impacted by the placement of Florida Power and Light's (FPL) power lines and easement, which traverse directly through our land rather than along its perimeter. This unusual placement severely restricts our usable building area, necessitating access clearance for the power lines. Despite efforts to mitigate this issue, including proposals to bury or relocate the lines at our expense, our requests were denied. A reduction in the separation distance to 12 feet is vital to enable the construction of two distinct structures, thereby aligning with Florida Building Code requirements without imposing undue limitations."

**Staff Review:** The location of the power lines and easement between the lots instead of along the perimeter, creates special conditions peculiar to this property when the lots are combined for a larger development. The Building and Fire Departments have indicated that the reduced separation is permissible if certain criteria are met for this type of occupancy during the building permit review.

**Item 2** - *"The special conditions and circumstances identified in Item 1 above are not the result of the actions of the applicant."*

**Applicant Response:** “The constraints posed by the utility easement and the positioning of the power lines were not influenced by any actions or decisions made by us, the applicant.”

**Staff Review:** The special conditions and circumstances peculiar to this property were not created by the applicant. The applicant has discussed alternatives with FPL such as burial or relocation of the powerlines, but these requests have been denied.

**Item 3 -** *“Literal interpretation and enforcement of the Land Development Code regulations would deprive the applicant of rights commonly enjoyed by other properties in the same land use category, zoning district or situation under the terms of the Land Development Code and would work unnecessary and undue hardship on the applicant.”*

**Applicant Response:** “Adhering strictly to the 30-foot separation requirement, given our unique circumstances, would necessitate treating the two buildings as a single structure. This classification would impose additional regulatory burdens, significantly elevating construction costs and potentially rendering the project infeasible.”

**Staff Review:** The literal interpretation and enforcement of the Land Development Code would require the applicant to maintain the thirty (30) foot separation between the multi-family residential buildings. The placement of the FPL easement and powerlines has created a hardship for this applicant to design around. If this variance is granted, the Building and Fire Departments have indicated that certain criteria must still be met for this type of occupancy to allow the reduced separation.

**Item 4 -** *“The variance, if granted, is the minimum variance necessary to make possible the reasonable use of the land, building, or structure.”*

**Applicant Response:** “The requested reduction to a 12-foot separation is the least deviation needed to facilitate the pragmatic and efficient use of our property, allowing for the development of two separate structures within the constraints imposed by the existing easement.”

**Staff Review:** The proposed variance will allow the applicant to develop the property as desired.

**Item 5 -** *“Granting of the variance request will not confer on the applicant any special privilege that is denied by the development code to other lands, buildings or structures in the same land use category, zoning district or situation.”*

**Applicant Response:** “The variance sought does not bestow any unique advantages upon us; it merely provides a necessary adjustment to accommodate the specific challenges of our property, ensuring parity with the opportunities available to other properties not similarly encumbered.”

**Staff Review:** Granting of the variance will not confer on the applicant any special privilege.

**Item 6 -** *"The granting of the variance will be in harmony with the general intent and purpose of this code and will not be injurious to the surrounding properties or detrimental to the public welfare."*

**Applicant Response:** "The proposed variance is in alignment with the overarching objectives of the code, designed to facilitate reasonable property development while maintaining aesthetic coherence and compliance with other code requirements. It will not adversely affect neighboring properties or the broader community."

**Staff Review:** Granting this variance will not be injurious to the surrounding properties or detrimental to the public welfare.

**Item 7 -** *"The variance represents a reasonable disposition of a claim brought under the Bert J. Harris Private Property Rights Protection Act, chapter 95-181, Laws of Florida, that a development order of the city has reasonably burdened the applicant's property, based on the recommendations of the special master appointed in accordance with the act, or the order of a court as described in the act."*

**Applicant Response:** "To date, we have not initiated a claim under the Bert J. Harris Private Property Rights Protection Act. The request for this variance is a proactive measure to address the unique constraints of our property and is not contingent upon a claim under the act."

**Staff Review:** Staff has not received a claim made upon this property, with respect to the "Bert J. Harris Act," or any development order, as indicated above. Therefore, Item 7 is not applicable to this variance request.

**STAFF RECOMMENDATION:**

Staff recommends approval of V24-00002, based on the facts presented, as required under Section 169.009 of the City of Palm Bay Code of Ordinances.

The Planning and Zoning Board must determine, based on the facts presented, to what degree, if any, of minimal relief, is required to meet the needs of the variance being requested, as required under Section 169.009 of the City of Palm Bay Code of Ordinances, and make recommendations to City Council for a final review.





*Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.*



## AERIAL LOCATION MAP CASE: V24-00002

### Subject Property

Located at the southeast corner of Agora Circle SE and Thor Avenue SE