

4. Request by Everly Mae Real Estate Fund LLC for 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), Palm Bay Code of Ordinances (3.22 acres) (V24-00002). (Quasi-Judicial Proceeding)



## MEMORANDUM

<b>TO:</b>	Honorable Mayor and Members of the City Council
<b>FROM:</b>	Suzanne Sherman, City Manager
<b>THRU:</b>	Lisa Frazier, AICP, Growth Management Director
<b>DATE:</b>	May 16, 2024
<b>RE:</b>	<b>**V24-00002 – The Palms Apartments – Everly Mae Real Estate Fund, LLC, Desi Humphries, Manager (Brent Howells, Build REI, LLC / J. Wesley Mills, P.E., Mills, Short &amp; Associates, Reps.) - A Variance to allow a 12-foot separation instead of the required 30 feet between two multiple-family residential buildings located on the same property as established by Section 185.038(F)(7)(e) of the Palm Bay Code of Ordinances. Lots 1 through 4 and Lot 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</b>

### SUMMARY:

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.

Fire and Building Departments were consulted regarding any concerns with construction in close proximity to power lines; staff advises that buildings will be constructed out of block and will meet all FBC and NFPA codes for construction.

### REQUESTING DEPARTMENTS:

Growth Management

**STAFF RECOMMENDATION:**

Motion to approve.

**Planning & Zoning Board Recommendation:**

Planning and Zoning Board minutes are not fully transcribed at this time; the following is an excerpt:

**Motion** by Mr. Warner, **Seconded** by Mr. Boerema to submit Case V24-00002 to the City Council for denial.

**Result:** Carried 5 to 0

**Aye:** Olszewski, Good, Boerema, Jordan, Warner

**Nay:** None

**Abstain:** None

**ATTACHMENTS:**

1. V24-00002 Staff Report
2. V24-00002 Site Plan
3. V24-00002 Survey Sheet 1
4. V24-00002 Survey Sheet 2
5. V24-00002 FPL Communication
6. V24-00002 Narrative
7. V24-00002 Application
8. V24-00002 Letter of Authorization
9. V24-00002 Legal Acknowledgement
10. V24-00002 Legal Ad



# STAFF REPORT

## LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: 321-733-3042

[landdevelopmentweb@palmbayflorida.org](mailto:landdevelopmentweb@palmbayflorida.org)

**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.*



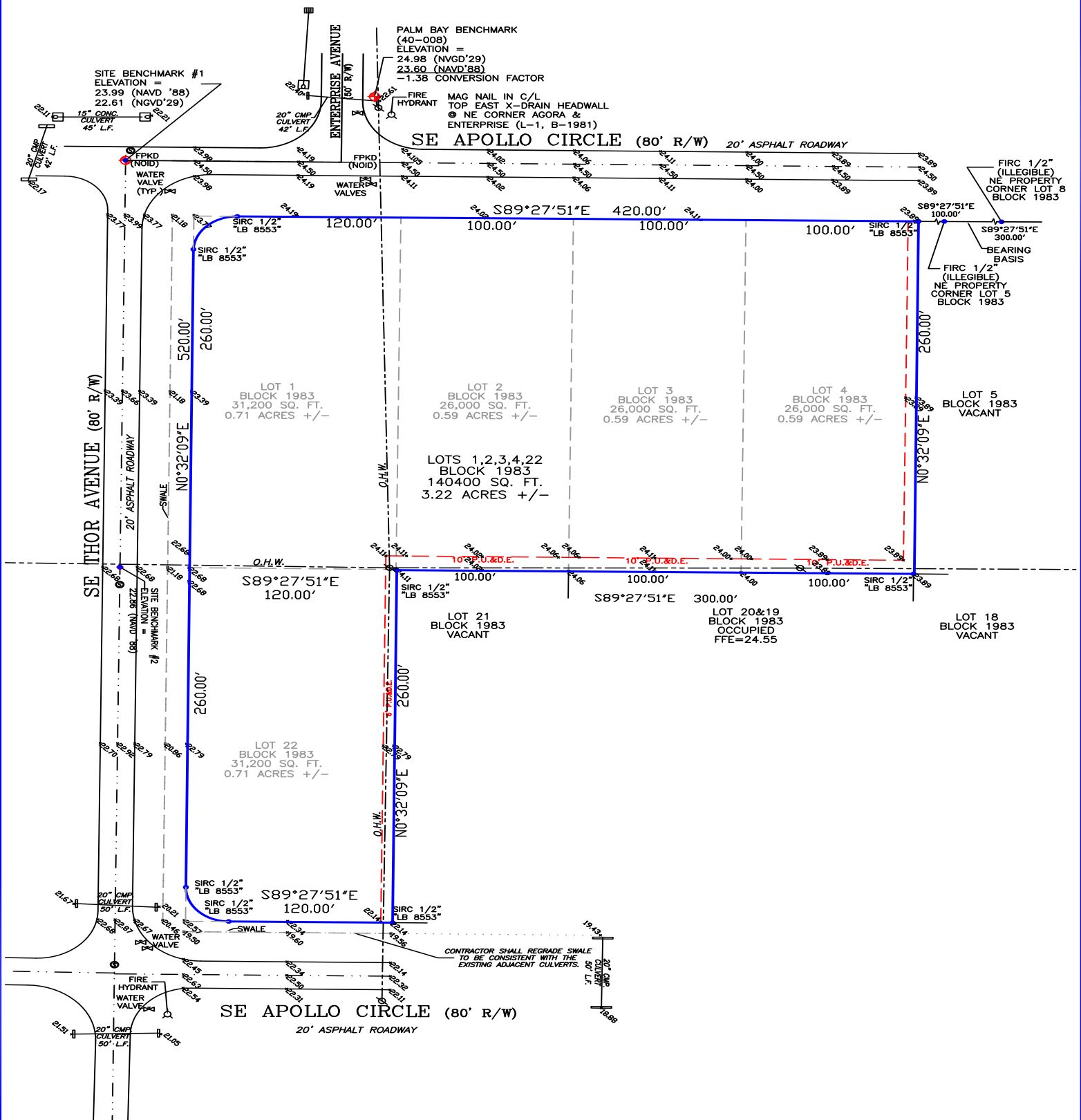
## AERIAL LOCATION MAP CASE: V24-00002

### Subject Property

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







**NOTES:**  
 ALL BEARINGS AND DISTANCES SHOWN ARE RECORD AND MEASURED, UNLESS OTHERWISE SHOWN.  
 P.U.&D.E. = PUBLIC UTILITY AND DRAINAGE EASEMENT.  
 BEARINGS ARE BASED UPON THE MEASURED BEARING FOR THE SOUTHERLY RIGHT OF WAY LINE OF SE APOLLO CIRCLE.

**ELEVATION NOTES:**  
 ALL ELEVATIONS SHOWN ARE BASED UPON NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD'88).  
 PROPOSED FINISHED FLOOR ELEVATION IS SUBJECT TO CHANGE PER HEALTH DEPARTMENT.

**NORTH ARROW & GRAPHIC SCALE**

**PERMIT NUMBER AND CONTACT**  
 BUILD R.E.I., LLC

JOB # - 2111-017	REVISION -
FIELD DATE - 4/27/2023	REVISION -
REVISION -	REVISION -
REVISION -	REVISION -
REVISION -	REVISION -
REVISION -	REVISION -
FLORIDA BUSINESS CERTIFICATE OF AUTHORIZATION NUMBER LB 8553	

**KIN SURVEYORS**  
 AKA KNOW IT NOW - TREASURE COAST INC.  
 PROFESSIONAL SURVEYING AND MAPPING  
 5220 US HIGHWAY 1, #104  
 VERO BEACH, FL 32967  
 PHONE - (888) 396-7770  
 WWW.KINSURVEY.COM

**LEGAL DESCRIPTION:**

LOTS 1, 2, 3, 4, AND 22, BLOCK 1983, PORT MALABAR, UNIT FORTY, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT BOOK 21, PAGE(S) 29 THROUGH 33, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

**JOB NUMBER:** 2111-017**FIELD WORK DATE:** 4/27/2023**PROPERTY ADDRESS:**

1801 AGORA CIRCLE SE, PALM BAY, FL 32909  
PARCEL ID 29-37-03-26-1983-22

**FLOOD INFORMATION:**

PANEL NUMBER: 12009C0680G

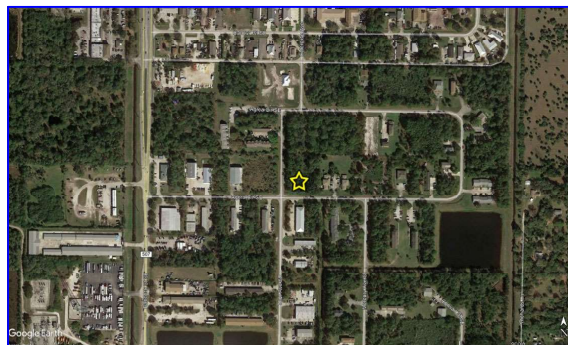
FIRM DATE: MARCH 17, 2014

FLOOD ZONE: X

BASE FLOOD ELEVATION: NA

COMMUNITY NAME: PALM BAY, CITY OF

COMMUNITY NUMBER: 120404

**AERIAL PHOTOGRAPH****SURVEYOR'S LEGEND**

A/C = AIR CONDITIONING  
BB = BEARING BASIS  
BFP = BACKFLOW PREVENTER  
BLDG = BUILDING  
BLK = BLOCK  
BM = BENCHMARK  
C = CURVE  
CATV = CABLE T.V. RISER  
CB = CATCH BASIN  
CL = CENTERLINE  
CLF = CHAIN LINK FENCE  
CLP = CONCRETE LIGHT POLE  
CONC = CONCRETE  
CP = CONTROL POINT  
CPP = CONCRETE POWER POLE  
D = DEED  
DF = DRAINFIELD  
ELEV = ELEVATION  
EM = ELECTRIC METER  
EOW = EDGE OF WATER  
EP = EDGE OF PAVEMENT  
F = FIELD  
FCM = FOUND CONCRETE MONUMENT  
FDH = FOUND DRILL HOLE

FFE = FINISHED FLOOR ELEVATION  
FIP = FOUND IRON PIPE  
FIPC = FOUND IRON PIPE AND CAP  
FIR = FOUND IRON ROD  
FIRC = FOUND IRON ROD AND CAP  
FN = FOUND NAIL  
FN&D = FOUND NAIL AND DISC  
FND = FOUND  
FPK = FOUND PK NAIL  
FPKD = FOUND PK NAIL AND DISC  
FRRSPK = FOUND RAILROAD SPIKE  
GAR = GARAGE  
HYD = FIRE HYDRANT  
ID = IDENTIFICATION  
L = LENGTH  
LB # = LICENSED BUSINESS  
LS # = LICENSED SURVEYOR  
M = MEASURED  
MB = MAP BOOK  
MES = MITERED END SECTION  
MH = MANHOLE  
MLP = METAL LIGHT POLE  
OHW = OVERHEAD WIRES  
P = PLAT  
PB = PLAT BOOK  
PC = POINT OF CURVATURE

PPC = POINT OF COMPOUND CURVATURE  
PCP = PERMANENT CONTROL POINT  
POB = POINT OF BEGINNING  
POC = POINT OF COMMENCEMENT  
PP = POOL PUMP  
PRC = POINT OF REVERSE CURVATURE  
PRM = PERMANENT REFERENCE MONUMENT  
PT = POINT OF TANGENCY  
R = RADIUS  
RNG = RANGE  
R/W = RIGHT OF WAY  
S = SEPTIC  
SEC = SECTION  
SIR = SET IRON ROD AND CAP  
SPKD = SET PK NAIL AND DISC  
SV = SEWER VALVE  
TBM = TEMPORARY BENCHMARK  
TOB = TOP OF BANK  
TWP = TOWNSHIP  
TYP = TYPICAL  
WIT = WITNESS  
WLP = WOOD LIGHT POLE  
WM = WATER METER  
WPP = WOOD POWER POLE  
WV = WATER VALVE

**LINETYPES**

— = BOUNDARY LINE  
— = STRUCTURE LINE  
- - - = CENTERLINE  
- - - = EASEMENT LINE  
- - - = FENCE LINE  
- - - = OLD LOT LINE

**SYMBOLS**

⊙ = FIRE HYDRANT  
⊗ = WATER METER  
⊖ = POWER POLE  
⊕ = GAS SERVICE  
⊙ = LIGHT POLE  
⊗ = WELL  
⊕ = BENCHMARK  
⊖ = CATCH BASIN  
⊙ = SANITARY MANHOLE  
⊗ = CABLE T.V. SERVICE  
⊕ = ELECTRIC SERVICE  
⊖ = TELEPHONE SERVICE  
⊙ = DRAINAGE MANHOLE  
⊗ = SANITARY SERVICE

**SURVEYOR'S NOTES**

1. UNDERGROUND UTILITIES, BUILDING FOUNDATIONS, AND OTHER UNDERGROUND FIXED IMPROVEMENTS WERE NOT LOCATED, UNLESS OTHERWISE INDICATED. TO THE EXTENT THAT THIS TYPE OF INFORMATION IS SHOWN, IT IS SHOWN SOLELY ON THE BASIS OF SURFACE INDICATIONS OBSERVED BY THE SURVEYOR AND MAY NOT BE COMPLETE.
2. JURISDICTIONAL WETLANDS AND ENDANGERED OR THREATENED SPECIES HABITAT, IF ANY, THAT MAY EXIST ON OR AROUND THE SURVEY SITE WERE NOT DETERMINED OR LOCATED.
3. THE SURVEY DATE IS THE FIELD DATE SHOWN IN THE TITLE BLOCK, NOT THE SIGNATURE DATE.
4. THIS SURVEY MAP OR THE COPIES THEREOF ARE NOT VALID WITHOUT THE SIGNATURE AND THE ELECTRONIC OR ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
5. FENCES SHOWN ON SURVEY ARE FOR ILLUSTRATIVE PURPOSES ONLY. FENCE TIES SHOWN ARE RELATIVE TO THE CENTER OF SAID FENCE. THE SURVEYOR WILL NOT BE RESPONSIBLE FOR DAMAGES RESULTING FROM THE REMOVAL AND/OR CHANGES TO ANY FENCES UNLESS THE SURVEY WAS PROVIDED SPECIFICALLY FOR FENCE LOCATION PURPOSES.
6. PROPERTY LINES AND OR IMPROVEMENTS SHOWN WERE PHYSICALLY LOCATED BY FIELD SURVEY.
7. MONUMENTS FOUND OR SET ARE SHOWN, CALCULATED LINES AND INFORMATION IS NOTED BY (C).
8. COMPUTATIONS OF LINES AND OR DATA NOT FOUND ARE SHOWN AS (C).
9. ACCURACIES OBTAINED IN THIS SURVEY IS GREATER THAN (RURAL) 1' IN 5000', (SUBURBAN) 1' IN 7500', (COMMERCIAL) 1' IN 10,000'.
10. PRIOR TO SURVEY INFORMATION OBTAINED WAS LEGAL DESCRIPTION FROM CLIENT OR FROM PUBLICLY PUBLISHED COUNTY TAX COLLECTOR SITE, RECORDED PLATS AND OR SECTION CORNER RECORDS IF APPLICABLE.
11. IF ONLY A DIGITAL SURVEY COPY IS REQUIRED A SURVEY REPORT WILL BE PLACED IN FILE. THE DIGITAL SURVEY IS NOT FULL AND COMPLETE WITHOUT THE SURVEY REPORT FILE.

**SURVEYOR'S SIGNATURE**

NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OR ELECTRONIC SEAL OF THE FLORIDA LICENSED SURVEYOR BELOW. THE SURVEYOR HEREBY CERTIFIES THAT THE ELECTRONIC SIGNATURE AND SEAL HEREON MEETS PROCEDURES SET FORTH IN CHAPTER 5J-17.062 OF THE FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.025, FLORIDA STATUTES. THE SURVEYOR HEREBY CERTIFIES THAT THIS SURVEY MEETS THE STANDARDS OF PRACTICE FOR SURVEYS, SET FORTH BY THE FLORIDA BOARD OF SURVEYORS AND MAPPERS IN CHAPTER 5J-17.051 AND 5J-17.052 OF THE FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.



BILL H HYATT  
2023.05.04  
11:32:24 -04'00'

BILL HYATT  
SURVEYOR AND MAPPER #4636  
STATE OF FLORIDA

DATE

FLORIDA BUSINESS CERTIFICATE OF AUTHORIZATION NUMBER LB 8553

**CERTIFIED TO:**

BUILD R.E.I., LLC

KIN SURVEYORS  
AKA KNOW IT NOW - TREASURE COAST INC.  
PROFESSIONAL SURVEYING AND MAPPING  
5220 US HIGHWAY 1, #104  
VERO BEACH, FL 32967  
PHONE - (888) 396-7770  
WWW.KINSURVEY.COM





Brent Howells &lt;crowderusa@gmail.com&gt;

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**Fwd: FPL: New project application received**

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Randy Oltmann &lt;randy@buildrei.com&gt;

Wed, Apr 5, 2023 at 9:31 AM

To: Brent Howells &lt;info@buildrei.com&gt;

For your records

----- Forwarded message -----

From: **FPL Account Management** <[FPL-Account-Management@mail.fpl.com](mailto:FPL-Account-Management@mail.fpl.com)>

Date: Wed, Apr 5, 2023 at 9:17 AM

Subject: FPL: New project application received

To: <[Randy@buildrei.com](mailto:Randy@buildrei.com)>

As of 04/05/2023 at 09:17:17 AM

[Update Email](#)

## Project Application Received

Hello **Randy**,

Thank you for using our FPL Project Portal to begin your electric service project. Your application for Coconut Palms 48 unit, Project # 12315356 was successfully submitted.

We're reviewing your information and an FPL project manager will be assigned to your project within two business days. We will contact you with additional information.

Remember you can check your application status anytime online. We look forward to working with you.

**CHECK STATUS**



Brent Howells &lt;crowderusa@gmail.com&gt;

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**Fwd: Thor Ave & Agora Cir - WR 12315356**

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**Babcox, Brian** <Brian.Babcox@fpl.com>

Fri, Apr 7, 2023 at 3:02 PM

To: Brent J Howells &lt;info@buildrei.com&gt;, Randy Oltmann &lt;randy@buildrei.com&gt;

Hey Brent

I tried giving you a call, I do not see any uploaded plans for the project application and I am trying to understand the scope of work for what you are building to determine who would be the lead for the permanent power for this project. Regarding relocation, are you referring to the N-S lines or the E-W. Primary and feeder dips are not standard for FPL and will not be done and based off the existing feeder it may be possible to move the aerial portion, but I would expect this to be in the 50K-100K range if even feasible.

Thanks

**Brian Babcox**

Contractor working on behalf of FPL

Brevard Operations – Relocations Lead

Melbourne Service Center – FPL

9001 Ellis Rd.

Melbourne, FL 32904

Office: 321-726-4834

Email: [Brian.Babcox@fpl.com](mailto:Brian.Babcox@fpl.com)

Please contact me with any questions or concerns. If you cannot reach me, feel free to contact my Engineering Leader Eric Ago at (o) 321-726-4811, (c) 407-353-9961 or [Eric.Ago@fpl.com](mailto:Eric.Ago@fpl.com).

Visit the new [FPL Project Portal](https://www.fpl.com/construction) at [FPL.com/construction](https://www.fpl.com/construction) to manage your FPL residential and commercial construction projects including milestones.

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**From:** Brent J Howells <[info@buildrei.com](mailto:info@buildrei.com)>**Sent:** Friday, April 7, 2023 1:58 PM**To:** Randy Oltmann <[randy@buildrei.com](mailto:randy@buildrei.com)>**Cc:** Babcox, Brian <[Brian.Babcox@fpl.com](mailto:Brian.Babcox@fpl.com)>**Subject:** Re: Thor Ave & Agora Cir - WR 12315356

Good morning Bryan,



Brent Howells &lt;crowderusa@gmail.com&gt;

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**Fwd: Thor Ave & Agora Cir - WR 12315356**

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**Babcox, Brian** <Brian.Babcox@fpl.com>  
To: Brent J Howells <info@buildrei.com>  
Cc: Randy Oltmann <randy@buildrei.com>

Fri, Apr 7, 2023 at 3:07 PM

Its against FPL policy to do any dips as it's a safety issue.

Thanks

**Brian Babcox**

Contractor working on behalf of FPL

Brevard Operations – Relocations Lead

Melbourne Service Center – FPL

9001 Ellis Rd.

Melbourne, FL 32904

Office: 321-726-4834

Email: [Brian.Babcox@fpl.com](mailto:Brian.Babcox@fpl.com)



*Please contact me with any questions or concerns. If you cannot reach me, feel free to contact my Engineering Leader Eric Ago at (o) 321-726-4811, (c) 407-353-9961 or [Eric.Ago@fpl.com](mailto:Eric.Ago@fpl.com).*

Visit the new [FPL Project Portal](https://www.fpl.com/construction) at [FPL.com/construction](https://www.fpl.com/construction) to manage your FPL residential and commercial construction projects including milestones.

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**From:** Brent J Howells <[info@buildrei.com](mailto:info@buildrei.com)>  
**Sent:** Friday, April 7, 2023 3:04 PM  
**To:** Babcox, Brian <[Brian.Babcox@fpl.com](mailto:Brian.Babcox@fpl.com)>  
**Cc:** Randy Oltmann <[randy@buildrei.com](mailto:randy@buildrei.com)>  
**Subject:** Re: Thor Ave & Agora Cir - WR 12315356

Hi Brian,

Here is the site plan and I should have the final civil drawings shortly. We only wish to bury the lines in front of our building but if necessary can bury in the retention area as well.





Brent Howells &lt;crowderusa@gmail.com&gt;

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**Fwd: Thor Ave & Agora Cir - WR 12315356**

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**Babcox, Brian** <Brian.Babcox@fpl.com>

Mon, Apr 10, 2023 at 2:18 PM

To: Randy Oltmann &lt;randy@buildrei.com&gt;, Brent J Howells &lt;info@buildrei.com&gt;

Hello

I spoke with Randy on the phone. To be clear its against FPL policy to bury a single primary dip as it's a safety issue and per OSHA regulations all new construction must be greater then 10ft from existing FPL overhead. In addition FPL does not sleeve line so allowing for greater clearance for working is suggested.

Thanks

**Brian Babcox**

Contractor working on behalf of FPL

Brevard Operations – Relocations Lead

Melbourne Service Center – FPL

9001 Ellis Rd.

Melbourne, FL 32904

Office: 321-726-4834

Email: [Brian.Babcox@fpl.com](mailto:Brian.Babcox@fpl.com)

*Please contact me with any questions or concerns. If you cannot reach me, feel free to contact my Engineering Leader Eric Ago at (o) 321-726-4811, (c) 407-353-9961 or [Eric.Ago@fpl.com](mailto:Eric.Ago@fpl.com).*

Visit the new [FPL Project Portal](https://www.fpl.com/construction) at [FPL.com/construction](https://www.fpl.com/construction) to manage your FPL residential and commercial construction projects including milestones.

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**From:** Randy Oltmann <randy@buildrei.com>**Sent:** Monday, April 10, 2023 11:01 AM**To:** Brent J Howells <info@buildrei.com>**Cc:** Babcox, Brian <Brian.Babcox@fpl.com>**Subject:** Re: Thor Ave & Agora Cir - WR 12315356

Will do.

# Mills, Short & Associates

CIVIL | STRUCTURAL | SURVEYING | ENVIRONMENTAL

CERTIFICATION OF AUTHORIZATION 30698

March 11, 2024

Ms. Tania Ramos  
Senior Planner  
City of Palm Bay  
120 Malabar Road SE  
Palm Bay, FL 32907

RE:    **Project Name:**                      The Palms Apartments  
         **Application Number:**              SP23-00044  
         **Site address/Location:**            2071 Agora CIR SE Palm Bay, FL 32909

Dear Ms. Ramos:

Please accept this letter as our formal request for a variance from the City's Ordinance Section 185.038.f.7.e, which mandates a minimum separation of 30 feet between two multi-family building structures located on the same property. We are requesting a variance to allow a 12-foot separation instead of the required 30 feet. Below, we provide justifications for each variance criterion

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

Justification:

Our property is uniquely impacted by the placement of Florida Power and Light's 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.

2. The special conditions and circumstances identified in paragraph (1) above are not the result of actions of the applicant.

Justification:

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

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, and would result in unnecessary and undue hardship on the applicant.

Justification:

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.

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

Justification:

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.

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.

Justification:

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.

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.

Justification:

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.

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 unreasonably burdened the applicant's property, based upon the recommendations of the special master appointed in accordance with the act, or the order of a court as described in the act.

Justification:

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.

Should you require further information or wish to discuss this request in more detail, please do not hesitate to reach out to us.

Sincerely,

MILLS, SHORT & ASSOCIATES, LLC.

A handwritten signature in blue ink, appearing to read "J. Wesley Mills", is written over a light gray rectangular background.

J. Wesley Mills, P.E.  
Principal

# Project Details: V24-00002

## Project Type: Variance Public Hearing Variance

Project Location: nan UNKNOWN # 2700 ANNELEIGH CIR Palm Bay, FL  
Milestone: Submitted  
Created: 3/14/2024  
Description: The Palms Apartments  
Assigned Planner: Tania Ramos

### Contacts

Contact	Information
Legal Representative	James Mills 700 22nd Place Vero Beach, FL 32960 (772) 473-6323 wmills@millsshortassociates.com
Owner/Applicant	EVERLY MAE REAL ESTATE FUND LLC 16885 W BERNARDO DR, STE 350 SAN DIEGO, CA 92127 (321) 287-8858 info@buildrei.com
Submitter	James W Mills 700 22nd Place Vero Beach, FL 32960  wmills@millsshortassociates.com
Assigned Planner	Tania Ramos FL  tania.ramos@palmbayflorida.org

### Fields

Field Label	Value
Block	1983
Lot	1
Township Range Section	29-37-03
Subdivision	26
Year Built	
Use Code	0007
Use Code Desc	VACANT RESIDENTIAL LAND (MULTI-FAMILY, PLATTED)

# Project Details: V24-00002

Lot Size	
Building SqFt	
Homestead Exemption	
Taxable Value Exemption	
Assessed Value	
Market Value	
Land Value	
Tax ID	2922962
Flu Description	High Density Residential
Flu Code	HDR
Zoning Description	Multiple-Family Residential
Zoning Code	RM-20
Tax Account Numbers	2922986, 2922962, 2922963, 2922964, 2922965
Are You a Property Owner of Record?	False
Bert J. Harris Private Property Act	False
Size of Area (acres)	
Exemption Type	
Site Section for Exemption	
Americans with Disabilities Act	False
How Variance Meets Sec. 169.009	See enclosed letter
Sections of Zoning Ordinance	185.038.f.7.e
Minimum Requested Distance/Height	12'
Intended Use of Property	Multi-family
Extent of Proposed Variance	Please find variance letter with request enclosed
Date of Action	
Variance Application Status	
Nature of Previous Application	
Variance Application Filed?	False



# Project Details: V24-00002

Parcel Number	29-37-03-26-1983-22, 29-37-03-26-1983-1, 29-37-03-26-1983-2, 29-37-03-26-1983-3, 29-37-03-26-1983-4
Structures On Property?	False
Final Order Date	

March 15, 2024

**Re: Letter of Authorization**

**As the property owner of the site legally described as:**

29-37-03-26-1983-22, 29-37-03-26-1983-1, 29-37-03-26-1983-2, 29-37-03-26-1983-3  
& 29-37-03-26-1983-4

I, Owner Name: Everly Mae Real Estate Fund, LLC

Address: 16885 W Bernardo Dr., Suite 350, San Diego, CA 92127

Telephone: 951-551-0087

Email: desi@americole.com

**hereby authorize:**

Representative: J. Wesley Mills, P.E. (Mills, Short & Associates)

Address: 700 22nd Place, Suite 2C, Vero Beach FL 32960

Telephone: 772-226-7282

Email: Wmills@MillsShortAssociates.com

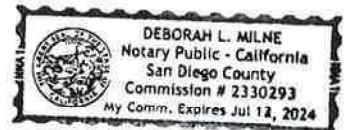
**to represent the request(s) for:**

Application for Building Variance

Desi A. Humphries  
(Property Owner Signature)

STATE OF California

COUNTY OF San Diego



The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 15 day of March, 20 24 by

Desi A. Humphries, property owner.

Deborah L. Milne, Notary Public

☐ Personally Known or ☒ Produced the Following Type of Identification:

CA Driver License

# Acknowledgement Log

**Header:**

Legal Acknowledgement

**Text:**

I, the submitter, understand that this application must be complete and accurate before consideration by the City of Palm Bay and certify that all the answers to the questions in said application, and all data and matter attached to and made part of said application are honest and true to the best of my knowledge and belief.

Under penalties of perjury, I declare that I have read the foregoing application and that the facts stated in it are true.

**Accepted By:**

James W Mills

**On:**

3/14/2024 6:06:04 PM

☒ V24-00002

Select Language | ▼