

ORDINANCE NO. 2016 - 28

AN ORDINANCE OF THE CITY COMMISSION OF DELAND, FLORIDA, CHANGING THE ZONING FROM THE CITY'S R-1, SINGLE FAMILY DWELLING, TO THE PALM GARDEN COTTAGES PD, PLANNED DEVELOPMENT ZONING DESIGNATION, ON PROPERTY LOCATED ON THE SOUTHEAST CORNER OF EAST VOORHIS AVENUE AND SOUTH CLAKE STREET; APPROVING A PLANNED DEVELOPMENT PLAN CONSISTING OF APPROXIMATELY 1.47 +/- ACRES OF PROPERTY; MAKING FINDINGS OF CONSISTENCY WITH THE COMPREHENSIVE LAND USE PLAN FOR THE CITY OF DELAND; DIRECTING CHANGE IN THE COMPREHENSIVE ZONING MAP; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Maurice Pinto and Cheryl Floyd own 1.47 +/- acres of land located on the southeast corner of East Voorhis Avenue and South Clake Street, which is more particularly described in the legal description attached hereto as Exhibit "A", and which by this reference is made a part hereof; and

WHEREAS, Michal E. Arth, on behalf of the owners, (hereinafter referred to as "Applicant") has applied for a change of zoning from the present zoning classification of City's R-1, Single Family Dwelling, to the Palm Garden Cottages PD, Planned Development District; and

WHEREAS, said rezoning as a PD District is consistent with both the Comprehensive Plan and the purpose and intent of Section 33-32 of the Code of Ordinances of the City of DeLand (the "Code"); and

WHEREAS, the Applicant has submitted an application for the approval of a development plan in order to change certain development standards for the property described in Exhibit "A" (hereinafter the "Property" or the "Project"); and

WHEREAS, the proposed development plan meets or exceeds the minimum conditions and standards for the PD District with respect to minimum development size, perimeter setbacks, comprehensive plan consistency, internal compatibility, external compatibility, open spaces, sidewalks, environmental constraints, internal access and circulation, external transportation access, off-street parking, public facilities and unified control; and

WHEREAS, the proposed development plan is consistent with the medium density future land use designation.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF DELAND, FLORIDA:

Section 1. The City Commission has held a public hearing to approve the change of zoning from the City's R-1, Single Family Dwelling zoning designation, to Palm Garden Cottages PD, Planned Development District, on the property located on the southeast corner of East Voorhis Avenue and South Clake Street.

Section 2. Pursuant to the determination made at a public hearing, the City Commission hereby amends the Comprehensive Zoning Map of the City to include the land described in Exhibit "A" as the Palm Garden Cottages PD, Planned Development District.

Section 3. The zoning of the Property as PD, Planned Development District, is made pursuant to Section 33-32 of the Code and the development of the Property shall take place in accordance with that Section and in substantial compliance with the Development Plan

Agreement, Maps and other supporting documentation submitted by the Applicant which shall be filed and retained for public inspection in the office of the City Planning Department and constitute a supplement to the official Zoning Map of the City.

Section 4. The approved Development Plan for the Palm Garden Cottages PD, Planned Development District, including the Development Plan Agreement, Map and other supporting documentation (on file with the City Planning Department), are attached hereto as Exhibit "B" and by this reference made a part hereof.

Section 5. The failure of the approved Development Plan to address a particular permit, condition, term or restriction shall not relieve the Applicant of the necessity of complying with any law governing said permitting requirements, conditions, terms or restrictions, as same may be amended or enacted from time to time in the future. All current land development regulations of the City are applicable to the PD District except to the extent that they conflict with a specific provision of the approved Development Plan.

Section 6. At the time of development, the Applicant shall comply with all relevant building codes and development standards contained in the City's Code of Ordinances or in the Development Plan; provided, however, that the development standards contained in the adopted Development Plan shall supersede comparable standards contained in the Code of Ordinances.

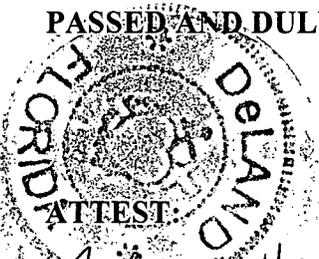
Section 7. Pursuant to Article 5 of the City's Land Development Regulations, the Applicant shall comply with all applicable infrastructure regulations.

Section 8. The City Engineer and Planning Director are hereby directed to change the Comprehensive Zoning Map of the City of DeLand to conform with the change of zoning enacted in this Ordinance.

Section 9. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, that holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 10. This Ordinance shall become effective immediately upon its adoption.

PASSED AND DULY ADOPTED this 3rd day of October, 2016.



Julie A. Hennessy
Julie A. Hennessy
City Clerk - Auditor

Robert F. Agger
Robert F. Agger
Mayor - Commissioner

Passed on first reading: September 19, 2016
Adopted on second reading: October 3, 2016

APPROVED AS TO FORM AND LEGALITY:

Darren J. Elkind
Darren J. Elkind
City Attorney

EXHIBIT A

Instrument# 2016-226820 # 3
Book: 7335
Page: 369

PHASE I : PALM GARDEN COTTAGES

DESCRIPTION: (PER O.R. BOOK 8821, PAGE 2424)

Lots 3 and 4, Block 14, Howry's Addition to DeLand, according to the map or plat thereof as recorded in Plat Book 1, Page 137, Public Records of Volusia County, Florida,

Parcel ID Nos. 7016-01-14-0030 and 7016-01-14-0040

and

Lots A and B, Clake's Resubdivision of Block 14, Howry's Addition to DeLand, according to the map or plat thereof as recorded in Plat Book 5, Page 2, Public Records of Volusia County, Florida,

Parcel ID Nos. 7016-12-00-0010 and 7016-12-00-0020

PHASE II : MIMOSA COURT :

DESCRIPTION: (PER ORB 5220 PG. 724)

THE WEST 127 FEET OF LOTS 15 AND 16, CLAKES RESUBDIVISION, A SUBDIVISION ACCORDING TO MAP IN MAP BOOK 5, PAGE 2, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

EXHIBIT A

RECEIVED

JUL 11 2016

PLANNING & ZONING

2-16-52

1 PLANNED DEVELOPMENT AGREEMENT

2 IN THE CITY COMMISSION OF THE

3 CITY OF DELAND, FLORIDA

4 IN RE: Z-16-52, Application of

5 Palm Garden Cottages, LLC

6 ORDINANCE # 2016-28

7
8 ORDER AND RESOLUTION
9

10 GRANTING A REQUEST FOR CHANGE OF ZONING FROM R-1 TO

11 THE PALM GARDEN COTTAGES AND MIMOSA COURT

12 RESIDENTIAL PD (PLANNED DEVELOPMENT)

13 The application of Palm Garden Cottages, LLC, hereinafter, "Applicant", for
14 rezoning was heard by and before the City Commission, DeLand, Florida on September
15 19, 2016 and October 03, 2016. Based upon the verified Application and other
16 supporting documents, maps, charts, overlays, other evidence and instruments; the
17 advice, report, and recommendations of the Community Development, and other
18 Departments and agencies of the DeLand, Florida; and the testimony adduced and
19 evidence received at the Public Hearing on this Application by the Planning Board on
20 August 17, 2016, and otherwise being fully advised, the City Commission does hereby
21 find and determine as follows:

22

EXHIBIT B

GENERAL FINDINGS

1
2
3 A. That the application of Palm Garden Cottages, LLC was duly and properly
4 filed herein on June 20, 2016 as required by law.

5 B. That all fees and costs which are by law, regulation, or Ordinance required
6 to be borne and paid by the applicant have been paid.

7 C. That the applicant (Palm Garden Cottages, LLC) is the owner of a 1.181
8 acre parcel of land which is situated in DeLand, Florida. The signatory on the
9 application, Michael E. Arth, as the sole managing member of Palm Garden Cottage,
10 LLC, is also the authorized agent for Cheryl Floyd, owner of the contiguous 0.291 acre
11 parcel which is to be Phase II, otherwise known as "Mimosa Court." Both parcels are
12 described more particularly in the surveys and legal descriptions, true copies of which
13 are attached hereto as Exhibit "A" and Exhibit "B", respectively.

14 D. That the Applicant has complied with the concept plan provision as
15 required by Land Development Regulations Ordinance #2013-11 as amended.

16 E. That the Applicant has complied with the "Due Public Notice" requirements
17 of the City Commission, Land Development Regulations Ordinance #2013-11, as
18 amended.

19 F. That the current owners agree with the provisions of the Development
20 Agreement.

21 FINDINGS REGARDING REZONING

22 A. That the Applicant has applied for a change of zoning from the present
23 zoning classifications of the parcels described in Exhibit "A" and Exhibit "B" from R-1 to
24 Planned Development.

1 B. That the said rezoning to a PD is consistent with both the City of DeLand
2 Comprehensive Plan Ordinance #1990-04, as amended, and the intent and purpose of
3 the City of DeLand Land Development Regulations Ordinance # 2013-11, as amended,
4 and does promote the public health, safety, morals, general welfare and orderly growth
5 of the area affected by the rezoning request.

6 NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE CITY OF
7 DELAND, FLORIDA, IN OPEN MEETING DULY ASSEMBLED IN THE CITY
8 COMMISSION CHAMBERS, 120 SOUTH FLORIDA AVENUE, DELAND, FLORIDA,
9 THIS 03RD DAY OF October, A.D., 2015, AS FOLLOWS:

10 A. That the Application of Palm Garden Cottage, LLC for the rezoning of the
11 subject parcels are hereby granted.

12 B. That the zoning classification of the subject parcels described in Exhibits "A"
13 and "B" attached hereto are hereby amended from R-1 to the Palm Garden Cottages
14 and Mimosa Court PD as described in Article VII of the City of DeLand, Land
15 Development Regulations Ordinance #2013-11, as amended.

16 C. That the Official Zoning Map of the City of DeLand, is hereby amended to
17 show the rezoning of said parcels to Palm Garden Cottages and Mimosa Court PD.

18 D. That the City of DeLand Land Development Regulations Ordinance #2013-11,
19 as amended, is consistent with the provisions of the "Development Agreement" as
20 hereinafter set forth in this Ordinance and with respect to any conflict between Land
21 Development Regulations #2013-11, as amended, and the "Development Agreement",
22 the provisions of the "Development Agreement" shall govern. Ordinance #2013-11, as
23 amended, shall govern with respect to any matter not covered by the "Development
24 Agreement." The City of DeLand, will ensure overall compliance with this Ordinance.

1 E. Unless otherwise provided for herein the City of DeLand, Land Development
2 Regulations Ordinance #2013-11, as amended, shall apply to the PD in the same
3 manner as the R-1 zoning classification.

4 F. Nothing in this Ordinance shall abridge the requirements of any City of
5 DeLand Ordinance other than Ordinance #2013-11, as amended. Timing and review
6 procedures contained in this Order and Resolution may be modified to comply with the
7 City of DeLand Land Development Regulations, Ordinance No. 2013-11, as amended.
8 Further, nothing in the Development Agreement is intended to abridge the requirements
9 of Ordinance No. 2013-11, as amended, and any other City Ordinances.

10 DEVELOPMENT AGREEMENT

11 A. Development Concept The property shall be developed as a PD substantially
12 in accordance with the Planned Development Plan. The Planned Development Plan
13 shall govern the development of the property as a PD and shall regulate the future land
14 use of this parcel.

15 1. Planned Development Plan The Planned Development Plan shall consist of
16 the Development Plan Map prepared by Michael E. Arth and dated August 29, 2016 and
17 this Development Agreement. The Planned Development Plan is hereby approved and
18 incorporated in this Ordinance by reference as Exhibit "C". The Planned Development
19 Plan shall be filed and retained for public inspection in the Planning Department and it
20 shall constitute a supplement to the Official Zoning Map of the City of DeLand.

21 2. Amendments. All amendments of the Planned Development Plan, other than
22 those deemed by the Planning Department to be minor amendments as set out in
23 Ordinance No. 2013-11, as amended, shall require the review and recommendation of
24 the Planning Board and action by the City Commission in the same manner as a
25 rezoning of the parcel.

1 3. Subdivision Approval. After the Planned Development Plan is recorded, and
2 prior to any construction, including clearing and landfill, an application for exemption; or
3 a preliminary and/or a final plat of the area to be subdivided shall be submitted for
4 review and approval in the manner required by Article 13 of the City of DeLand Land
5 Development Regulations, Ordinance No. 2013-11, as amended. A homeowner's
6 association will be established to manage common areas.

7 4. Final Site Plan Approval. After the Planned Development Plan is recorded, and
8 prior to issuance of any permits for construction, including clearing and landfill, a Final
9 Site Plan shall be prepared and submitted for review and approval in the manner
10 required by Article 12 of the City of DeLand, Land Development Regulations Ordinance
11 #2013-11, as amended.

12 B. Unified Ownership. The Applicant or his successors, or assignees, shall
13 maintain unified ownership of the subject parcel until after issuance of the Final Site
14 Plan Development Order.

15 C. Phases of Development: The Palm Garden Cottages phase of the project,
16 consisting of 13 fee simple residences, will have its infrastructure built first, and the 13
17 lots will be sold and individually developed according to a pattern book and developer
18 design review that will allow the buyers a range of choices including one to two and one
19 half stories. The development schedule is subject to market conditions, but the goal is to
20 finish within 2-5 years. (Alternatively, there may be 12 fee simple residents and a pool
21 and pool house owned in common.) The subdivision (or creation of condominiums) and
22 construction of the four residences in Phase II may begin at any time that the market
23 allows. It is expected, but not required, that Phase I will be substantially built before
24 Phase II is undertaken. The infrastructure of Phase II will probably be separate, but it is

1 not required. A homeowner's association may also be separate or combined for both
2 phases.

3 D. Land Uses Within the PD. All land uses are residential, along with their
4 customary accessory uses and structures, as shown on the plan, with minor variations
5 allowed. Home occupations, including home offices, are permitted as accessory uses
6 per Sec. 33-27.01 of the Land Development Regulations.

7 Palm Garden Cottages (PGC):

8 1. 13 single family attached or detached residences (or 12 residences & pool with
9 pool house instead of private residence described as unit "6B." Guest parking would still
10 consist of 6 spaces under this option.)

11 2. Pedestrian Lane, which may be brick or another approved material, with
12 fountain.

13 3. Bicycle enclosure.

14 4. Option for automated automobile gates at S. Clake and E. Voorhis.

15 5. Pedestrian access to be provided from S. Clake and E. Voorhis.

16 6. Two enclosed (or covered carport in the case of optional parallel parking on
17 the east side of units 7-12) and surfaced parking spaces per unit, plus 6 off-street guest
18 parking spaces shared by 13 units. (Guest parking consists of a minimum of 4 head-in
19 parking spaces, a drop-off/parallel parking space, and a parallel handicap space for a
20 total of .46 spaces per unit)

21 7. A 19' wide one-way private street allows vehicular and emergency vehicle
22 access to townhouses.

23 Mimosa Court:

24 1. 4 single family residences, which may be condos or on subdivided fee simple
25 parcels.



- 1 2. Shared courtyard with fountain.
- 2 3. Bicycle enclosure, which may be shared with PGC.
- 3 4. Automobile gates to be shared by agreement with PGC.
- 4 5. Pedestrian access to be through pedestrian gates.
- 5 6. Individual off-street parking and/or garages, plus guest parking.

6 E. Development Standards for Phase I and II.

- 7 1. Minimum lot area: 1,200 sq. ft.
- 8 2. Minimum yard size:
 - 9 a. Interior setback (pedestrian lane facing) yard, 0 ft.
 - 10 b. Private street with rear loading garage: 0 ft.
 - 11 c. Side yard: 0 ft.
- 12 3. Minimum floor area: 1,000 sq. ft.
- 13 4. Maximum lot coverage: 100%
- 14 5. Maximum building height: 35 feet.
- 15 6. Landscape buffer requirements: 10' from Voorhis Avenue sidewalk (8'
- 16 masonry wall on property line is allowed in order to create courtyards, as shown).
- 17 7. Perimeter building setbacks: 0'
- 18 8. Minimum building separation: 0'
- 19 9. Pedestrian lane minimum width: 5'
- 20 9. Off-Street parking requirements: two per dwelling, plus six shared guest
- 21 parking spaces (including a drop-off parallel space and a parallel handicap space).
- 22 10. The Common Areas include the private street, guest parking, the linear
- 23 park/pedestrian lane, the bike areas, garbage, and the various landscaped areas.

24 F. Environmental Considerations. All runoff is maintained on site. Most of the
25 lots are already cleared of trees in the areas where construction is to take place.

1 Determinations regarding which trees are to be preserved, removed, and installed will
2 be finalized during the final development order process. Tree removal and replacement
3 shall comply with Sec. 33-57.05 of the Land Development Regulations.

4 Trees to be preserved:

5 1. One, 3 ft. diameter Monkey Ear Tree ("Guanacaste") at NE corner of Mimosa Court,
6 as shown on plan.

7 2. One, 3 ft. diameter Laurel Oak at the NW corner of Mimosa Court.

8 3. One, 3 ft. diameter Laurel Oak at the SE corner of Mimosa Court.

9 4. All trees (Laurel Oaks) along the east property line of Mimosa Court.

10 5. Three Laurel Oaks and one Camphor along the proposed pedestrian lane at PGC.

11 6. One Sabal palmetto north center side of PGC

12 7. Probable preservation: Triple Laurel Oak clump (12", 12" and 14") at N.E. corner of
13 PGC. The final decision will be made by the future homeowner.

14 Trees slated for removal:

15 Mimosa Court: One 48" diameter Laurel Oak in decline on south, south east side.

16 Palm Garden Cottages:

17 Nineteen Laurel Oaks, 3", 10", 10", 11", 11", 11", 12", 12", 12", 12", 12", 15", 15", 21", 24",
18 24", 26", 31", 36" diameters.

19 The larger ones are in decline. Eleven are under the South Clake Avenue power lines.

20 One 14" Cherry laurel,

21 2 Sabal palmettos

22 Invasive trees to be removed: Seven Camphors and one Monkey Ear Tree

23 Replacement trees to be installed:

24 Mimosa Court: Two 18" diameter Sabal palmettos, min 10' clear trunk.

25 Palm Garden Cottages:

1 21 *Sabal palmettos* (18" diameter), min. 10' clear trunk.

2 5 *Quercus virginiana* trees (live oak) 3" diameter.

3 Other trees to be installed:

4 Mimosa Court: 4 *Phoenix dactylifera* (var. *Medjool* or *Sylvestris*)

5 Palm Garden Cottages: Two or three *Phoenix dactylifera* along drop-off area.

6 G. Sewage Disposal and Potable Water. Provision for sewage disposal and
7 potable water needs of the PD will be provided in accordance with the Comprehensive
8 Plan, Ordinance No 1990-04, as amended, the Land Development Regulations
9 Ordinance No 2013-11, as amended, and State of Florida Administrative Code 64E-6.

10 H. Stormwater Drainage. Provision for stormwater retention shall be in
11 accordance with the Land Development Regulations Ordinance #2013-11, as amended.

12 I. Access and Transportation System Improvements. All access and
13 transportation system improvements shall be provided in accordance with the Land
14 Development Regulations Ordinance #2013-11, as amended. The parcel shall be
15 developed in substantial accordance with the following access and transportation
16 system improvements:

17 1. Access. Pedestrian access and egress is from both South Clake Street and
18 East Voorhis Avenue. Vehicular access is from South Clake Street and vehicular egress
19 is onto East Voorhis Avenue.

20 2. Transportation System Improvements. The pedestrian village model (cars in
21 the rear, pedestrian lanes or courtyards in front) used here anticipates the coming era of
22 shared-autonomous vehicles when private automobile ownership, private garages, and
23 onerous parking requirements will be greatly reduced. In the case of this Planned
24 Development, there is an intermodal bus facility two blocks south, and the DeLand Bike
25 and Pedestrian Greenway is one block east.

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21 the rear, pedestrian lanes or courtyards in front) used here anticipates the coming era of
22 shared-autonomous vehicles when private automobile ownership, private garages, and
23 onerous parking requirements will be greatly reduced. In the case of this Planned
24 Development, there is an intermodal bus facility two blocks south, and the DeLand Bike
25 and Pedestrian Greenway is one block east.

1 N. Binding Effect of Plans; Recording; and Effective Date. The Planned
2 Development Plan, including any and all amendments shall bind and more to the benefit
3 of the Applicant and his successor in title or interest. The Palm Garden Cottages and
4 Mimosa Court PD zoning, provisions of the "Development Agreement" and all approved
5 plans shall run with the land and shall be administered in a manner consistent with
6 Article 12 of the City of DeLand Land Development Regulations Ordinance # 2013-11,
7 as amended.

8 This Ordinance and all subsequent amendments shall be filed with the Clerk of
9 the Court and recorded within forty-five (45) days following execution of the document
10 by the City Commission, in the Official Records of Volusia County, Florida. One copy of
11 the document, bearing the book and page number of the Official Record in which the
12 document was recorded, shall be submitted to the Planning Department for placement
13 in the public file. The date of recording of this document shall constitute the effective
14 date of The Palm Garden Cottages and Mimosa Court PD or its subsequent
15 amendments. The applicant shall pay all filing costs for recording documents.

16
17



DONE and ORDERED by the City Commission, City of DeLand, Florida,
this 3rd day of October, 2016.

ATTEST: City Commission of DeLand Florida

Michael Pleus

Robert Apgar

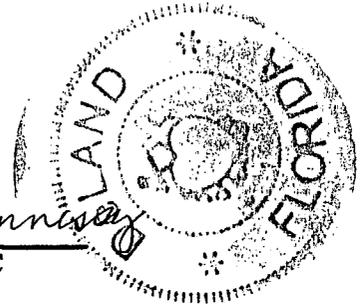
Michael Pleus
City Manager

Robert Apgar
Mayor

STATE OF FLORIDA
CITY OF DELAND

ATTEST:

Julie A. Hennessy
Julie A. Hennessy, MMC
City Clerk - Auditor



The foregoing instrument was acknowledged before me this 10th day of
NOV, 2016 (mo/yr), by Michael Pleus and Robert Apgar, as City Manager and
Mayor, City of DeLand, respectively, on behalf of the City of DeLand, and who are
personally known to me.



NOTARY PUBLIC, STATE OF FLORIDA

Julie Hewitt

Commission No: ~~12-29-19~~ FF946646

My Commission Expires: 12-29-19

WITNESSES:

Vickie Belanger

Applicant's Name, Title & Corporation

PALM GARDEN COTTAGES LLC

Michael C. Arth, Manager

Applicant's Name, Title & Corporation

[Signature]

Owner of Property (if other than applicant)

Instrument# 2016-226820 # 16
Book: 7335
Page: 382

The foregoing instrument was acknowledged before me this 9 day
of November 2016 by Michael Arth
who is personally known to me or who has produced
Known as identification.

NOTARY PUBLIC, STATE OF FLORIDA

Type or Print Name:

Elysha Petschauer

Commission No.: FF 957962

My Commission Expires: May 28, 2020

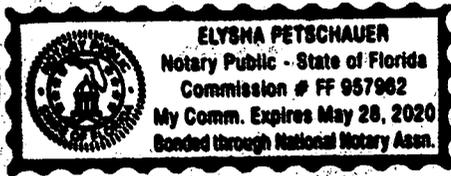


EXHIBIT A

PHASE I : PALM GARDEN COTTAGES

DESCRIPTION: (PER O.R. BOOK 6821, PAGE 2424)

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Parcel ID Nos. 7016-01-14-0030 and 7016-01-14-0040

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Lots A and B, Clarke's Resubdivision of Block 14, Howry's Addition to DeLand, according to the map or plat thereof as recorded in Plat Book 5, Page 2, Public Records of Volusia County, Florida,

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DESCRIPTION: (PER ORB 5220 PG. 724)

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PLANNING & ZONING

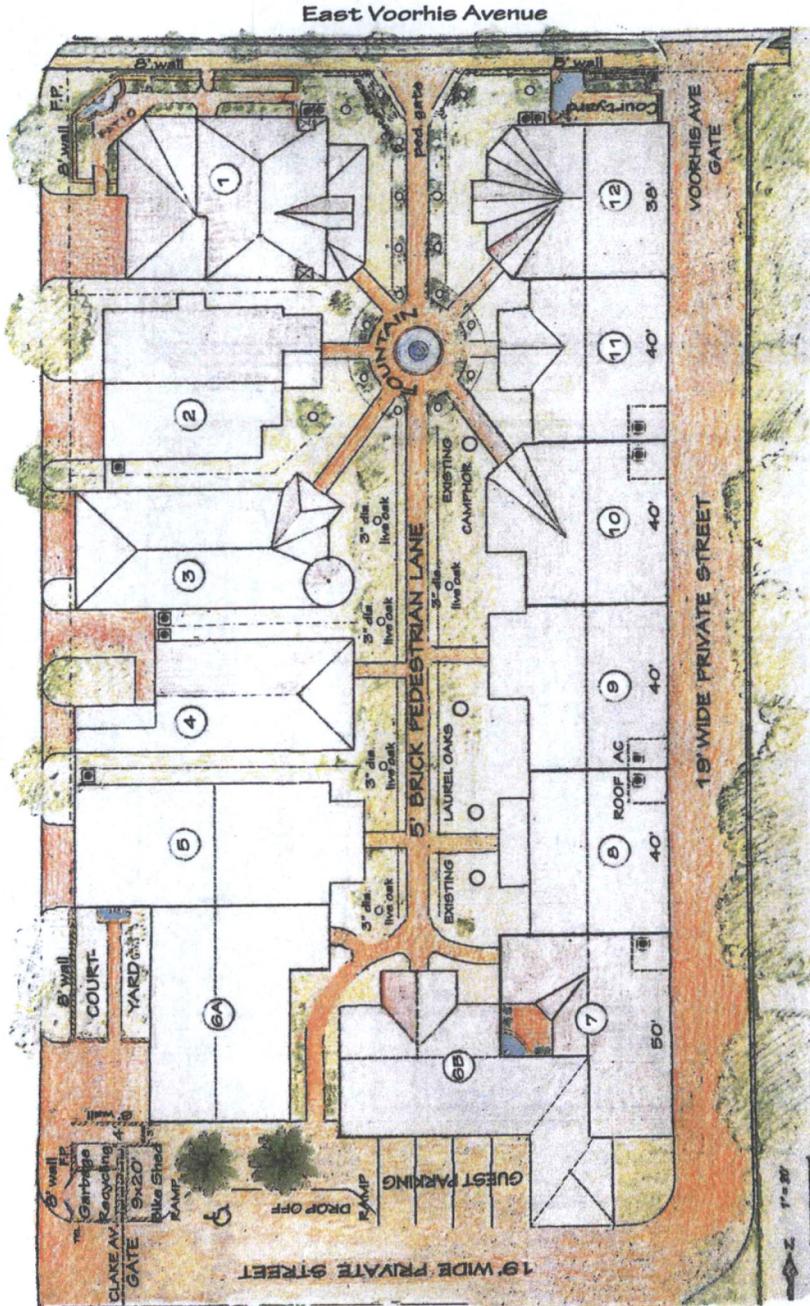
2-16-52

Palm Garden Cottages - Phase I

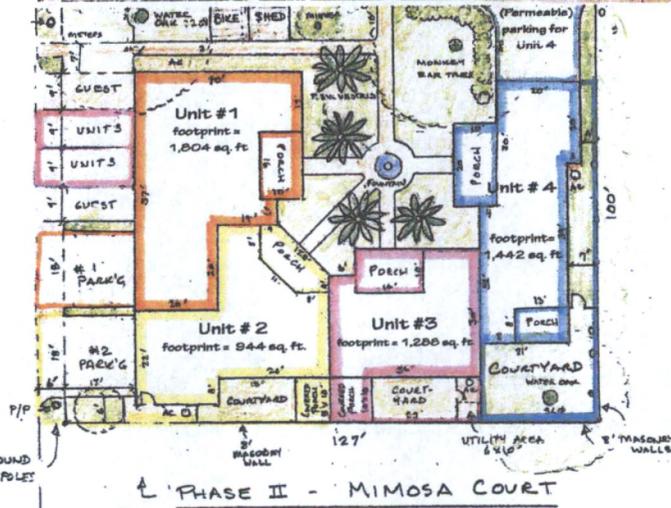
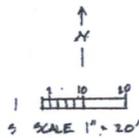
Revised: August 5, 2016

Suggested footprints and roof pitches shown - 12"-24" eaves not shown

EXHIBIT C



print for the print calculations for Mimosa Court Include building and covered porches only



Mimosa Court Phase II - 4 Units

ALL FENCES AND FREE-STANDING WALLS, WHETHER ON THE LOT LINE OR NOT, MAY BE UP TO 8' FT.