

RESOLUTION NO. R-91-237

RESOLUTION APPROVING ZONING PETITION NO. 73-85(E)  
MODIFICATION OF COMMISSION REQUIREMENTS  
PETITION OF KENNEDY GROUP, INC.  
BY STEVEN M. AUERBACKER, AGENT

WHEREAS, the Board of County Commissioners, as the governing body, pursuant to the authority vested in Chapter 163 and Chapter 125, Florida Statutes, is authorized and empowered to consider petitions relating to zoning; and

WHEREAS, the notice and hearing requirements as provided for in Chapter 402.5 of the Palm Beach County Zoning Code have been satisfied; and

WHEREAS, Petition No. 73-85(E) was presented to the Board of County Commissioners of Palm Beach County, sitting as the Zoning Authority, at its public hearing conducted on July 26, 1990; and

WHEREAS, the Board of County Commissioners, sitting as the Zoning Authority, has considered the evidence and testimony presented by the applicant and other interested parties and the recommendations of the various county review agencies and the recommendations of the Planning Commission; and

WHEREAS, this approval is subject to Zoning Code Section 402.9 (Mandatory Review of Development Approvals) and other provisions requiring that development commence in a timely manner; and

WHEREAS, the Board of County Commissioners, sitting as the Zoning Authority, made the following findings of fact:

1. This proposal is consistent with the requirements of the Comprehensive and local land development regulations.

WHEREAS, 402.5 of the Zoning Code requires that the action of the Board of County Commissioners, sitting as the Zoning Authority, be adopted by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA that Petition No. 73-85(E), the petition of KENNEDY GROUP, INC. BY STEVEN M. AUERBACKER, AGENT, for a MODIFICATION OF COMMISSION REQUIREMENTS FOR CONDITION NUMBER 14, PERTAINING TO WALL AND BERMS (R-89-1153) on a parcel of land lying in Tract "R" of Boca Pointe No. 3, as recorded in Plat Book 46, Page 123 and being located on the WEST SIDE OF CANARY PALM DRIVE, APPROXIMATELY 0.2 MILE NORTH OF S.W. 18TH STREET, WITHIN BOCA POINTE PLANNED UNIT DEVELOPMENT, IN THE RS ZONING DISTRICT, was approved on July 26, 1990, as advertised, subject to the following conditions:

STANDARD CONDITIONS

1. The developer shall comply with, all previous conditions of approval unless expressly modified herein.

MODIFICATION

2. Condition No. 14 of Petition No. 73-85(E), Resolution No. R-89-1153, which states:

"Prior to commencement of construction, the property owner shall install a four (4') foot high berm with a masonry wall compatible with the property entry wall. The berm and wall shall be seven (7') feet above the Marbella Woods (adjoining

subdivision) grade. ~~The~~ peak of the berm shall be eight (8') feet from Marbella Woods property line. The berm shall be landscaped by owner to "final condition" and shall be maintained by Marbella Woods thereafter. The property owner shall ensure proper drainage and shall not create a water retention area on Marbella Woods property."

Is hereby modified to read:

"Prior to commencement of construction, the property owner shall install a four (4') foot high berm with a masonry wall compatible with the property entry wall. The berm and wall shall be seven (7') feet above ~~the~~ Marbella Woods (adjoining subdivision) grade. ~~The~~ peak of the berm shall be eight (8') feet from Marbella Woods property line. The berm shall be landscaped by owner to "final condition" and shall be maintained by Marbella Woods thereafter. The property owner shall ensure proper drainage and shall not create a water retention area on Marbella Woods property.

The developer/owner of Tract R, The Kennedy Group, Ltd. and the adjacent landowner to the north, represented by their homeowner's association Marbella Woods Homeowners Association, Inc., shall provide landscaping to replace the above required wall with trees and hedges along the common boundary of Tract R and Marbella Woods, in accordance with, and pursuant to, a Landscape Maintenance Easement Agreement."

#### COMPLIANCE

3. As provided in the Palm Beach County Zoning Code, Sections 400.2 and 402.6, failure to comply with any of these conditions of approval at any time may result in:
  - a. The denial or revocation of a building permit; the issuance of a stop work order; the denial of a Certificate of Occupancy on any building or structure; or the denial or revocation of any permit or approval for any developer-owner, commercial-owner, lessee, or user of the subject property; and/or
  - b. The revocation of the Special Exception and any zoning which was approved concurrently with the Special Exception as well as any previously granted certifications of concurrency or exemptions therefrom; and/or
  - c. A requirement of the development to conform with updated standards of development, applicable 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.

Appeals of any departmental-administrative actions hereunder may be taken to the Palm Beach County Board of Adjustment or as otherwise provided in the Palm Beach County Zoning Code. Appeals of any revocation of Special Exception, Rezoning, or other actions based on a Board of County Commission decision, shall be by petition for writ of certiorari to the Fifteenth Judicial Circuit.

Commissioner Phillips moved for approval of the Resolution.

The motion was seconded by Commissioner McCarty and, upon being put to a vote, the vote was as follows:

Karen T. Marcus, Chair	--	AYE
Carole Phillips	--	AYE
Carol Roberts	--	AYE
Carol J. Elmquist	--	AYE
Mary McCarty	--	AYE
Ken Foster	--	AYE
Maude Ford Lee	--	AYE

The Chair thereupon declared the resolution was duly passed and adopted this 26th day of February, 1991.

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

JOHN B. DUNKLE, CLERK

BY:

  
COUNTY ATTORNEY

BY:

  
DEPUTY CLERK