

RESOLUTION NO. R-2008- 1959

RESOLUTION APPROVING ZONING APPLICATION ZV/PDD-2008-00804  
(CONTROL NO. 2008-00243)  
OFFICIAL ZONING MAP AMENDMENT  
TO A PLANNED DEVELOPMENT DISTRICT (PDD)  
APPLICATION OF HYPOLUXO SHOPPES INC  
BY LAW OFFICE OF STUART MICHELSON, AGENT  
(HYPOLUXO SHOPPES)

WHEREAS, the Board of County Commissioners, as the governing body of Palm Beach County, Florida, pursuant to the authority vested in Chapter 163 and Chapter 125, Florida Statutes, and the Palm Beach County Unified Land Development Code, as amended, is authorized and empowered to consider applications relating to zoning; and

WHEREAS, the notice and hearing requirements, as provided for in Article 2 (Development Review Process) of the Palm Beach County Unified Land Development Code (Ordinance 2003-067, as amended) have been satisfied; and

WHEREAS, Zoning Application ZV/PDD-2008-00804 was presented to the Board of County Commissioners at a public hearing conducted on October 23, 2008; and

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

WHEREAS, this approval is subject to Article 2.E (Monitoring) of the Palm Beach County Unified Land Development Code (ULDC) and other provisions requiring that development commence in a timely manner; and

WHEREAS, the Board of County Commissioners has considered the findings in the staff report and the following findings of fact:

1. This official zoning map amendment (rezoning) is consistent with the Palm Beach County Comprehensive Plan.
2. This official zoning map amendment (rezoning) is consistent with the stated purpose and intent and requirements of the Palm Beach County Unified Land Development Code. The rezoning request is also consistent with the requirements of all other applicable local land development regulations.
3. This official zoning map amendment (rezoning) is compatible and generally consistent with existing uses and zones surrounding the subject land, and is the appropriate zoning district for the land.
4. This official zoning map amendment (rezoning) does not result in significantly adverse impacts on the natural environment, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.
5. This official zoning map amendment (rezoning) will result in a logical, orderly and timely development pattern.
6. This official zoning map amendment is consistent with applicable Neighborhood Plans.
7. This official zoning map amendment (rezoning) complies with Article 2.F (Concurrency) of the Palm Beach County Unified Land Development Code.

8. The applicant has demonstrated that there are sufficient changed conditions or circumstances that require an amendment.

WHEREAS, Article 2.A.1.K.3.b (Action by BCC) of the Palm Beach County Unified Land Development Code requires that the action of the Board of County Commissioners be adopted by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that Zoning Application PDDZV/PDD-2008-00804, the application of Hypoluxo Shoppes Inc, by Law Office of Stuart Michelson, agent, for an Official Zoning Map Amendment to a Planned Development District to rezone from the Community Commercial (CC) Zoning District to the Multiple Use Planned Development (MUPD) Zoning District in the MUPD Zoning District, on a parcel of land legally described in EXHIBIT A, attached hereto and made a part hereof, and generally located as shown on a vicinity sketch as indicated in EXHIBIT B, attached hereto and made a part hereof, was approved on October 23, 2008, subject to the conditions of approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Jeff Koons moved for the approval of the Resolution.

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

Addie L. Greene, Chairperson	-	Aye
Jeff Koons, Vice Chair	-	Aye
Karen T. Marcus	-	Absent
Robert J. Kanjian	-	Aye
Mary McCarty	-	Aye
Burt Aaronson	-	Aye
Jess R. Santamaria	-	

The Chairperson thereupon declared that the resolution was duly passed and adopted on October 23, 2008.

Filed with the Clerk of the Board of County Commissioners on 23rd day of October, 2008.

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

SHARON R. BOCK,  
CLERK & COMPTROLLER

BY:

  
COUNTY ATTORNEY

BY:


  
DEPUTY CLERK



EXHIBIT A

LEGAL DESCRIPTION

SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 4, TOWNSHIP 45 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, LESS AND EXCEPT RIGHT-OF-WAYS FOR STATE ROAD 9 (US I-95), HYPOLUXO ROAD AND HIGH RIDGE ROAD,

ALSO KNOWN AS:

A PARCEL OF LAND BEING A PORTION OF THE SOUTHWEST QUARTER (S.W. 1/4) OF THE SOUTHWEST QUARTER (S.W. 1/4) OF THE SOUTHWEST QUARTER (S.W. 1/4) OF SECTION 4, TOWNSHIP 45 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

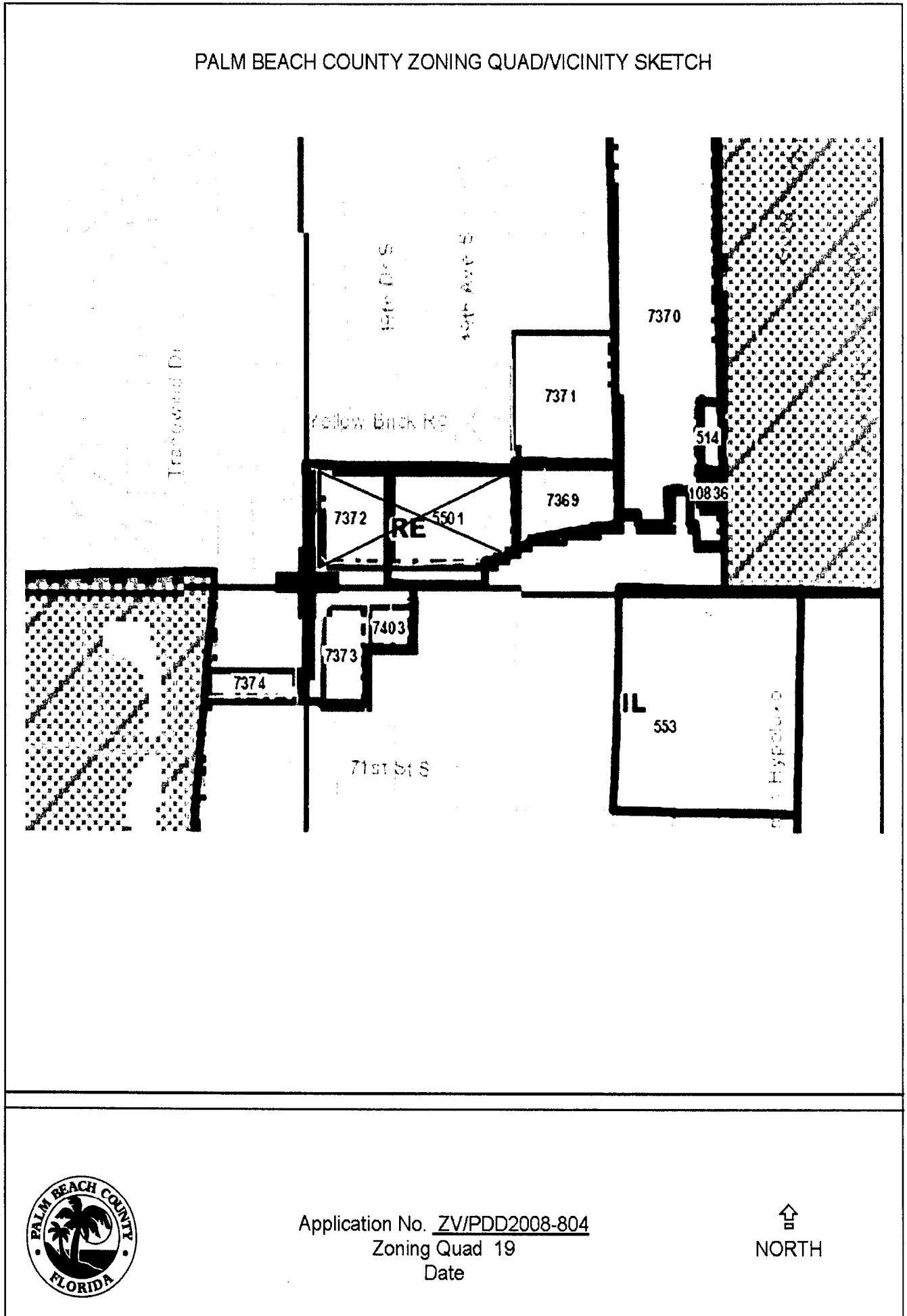
COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 4, RUN NORTH 02 DEGREES 18 MINUTES 16 SECONDS WEST, ALONG THE WEST LINE OF SAID SECTION 4, A DISTANCE OF 348.39 FEET; THENCE SOUTH 89 DEGREES 50 MINUTES 23 SECONDS EAST A DISTANCE OF 40.03 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF HIGH RIDGE ROAD (80.00 FEET WIDE RIGHT-OF-WAY); SAID POINT BEING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND; CONTINUE THENCE SOUTH 89 DEGREES 50 MINUTES 23 SECONDS EAST ALONG THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 4, A DISTANCE OF 641.64 FEET; THENCE SOUTH 02 DEGREES 17 MINUTES 00 SECONDS EAST ALONG THE WEST LINE OF THE WEST HALF OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 4, A DISTANCE OF 242.87 FEET; THENCE SOUTH 57 DEGREES 39 MINUTES 18 SECONDS WEST A DISTANCE OF 53.35 FEET; THENCE SOUTH 85 DEGREES 48 MINUTES 21 SECONDS WEST A DISTANCE OF 287.09 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF HYPOLUXO ROAD (108 FEET WIDE RIGHT-OF-WAY); THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 284.07 FEET; THENCE NORTH 46 DEGREES 09 MINUTES 08 SECONDS WEST A DISTANCE OF 34.64 FEET; THENCE NORTH 02 DEGREES 18 MINUTES 16 SECONDS WEST A DISTANCE OF 270.21 FEET TO THE POINT OF BEGINNING.

SUBJECT TO RESTRICTIONS, RESERVATIONS AND EASEMENTS OF RECORD, IF ANY, AND TAXES SUBSEQUENT TO 2005.

RESTRICTIVE COVENANT: FOR A TERM OF TWENTY (20) YEARS FROM DATE HEREOF, THE SUBJECT PROPERTY DESCRIBED HEREINABOVE SHALL NOT BE UTILIZED FOR THE SALE OF GASOLINE, NOR FOR A FREE STANDING CONVENIENCE STORE OF LESS THAN 4,000 SQUARE FEET. PROVIDED HOWEVER, IF SELLER'S ADJOINING PROPERTY IS NOT RE-DEVELOPED INTO A "CLASS A" GAS STATION WITHIN THREE (3) YEARS FROM DATE HEREOF, THIS RESTRICTION SHALL AUTOMATICALLY BE NULL AND VOID. SELLER'S ADJOINING PROPERTY IS DESCRIBED AS FOLLOWS:

THE WEST 1/2 OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 4, TOWNSHIP 45 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, LESS THE NORTH 1019.90 FEET THEREOF, AS MEASURED ALONG THE EAST AND WEST LINES OF THE SAID WEST 1/2 OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 4, AND LESS THE RIGHT-OF-WAY FOR I-95.

EXHIBIT B  
VICINITY SKETCH



Application No. ZV/PDD2008-804  
Zoning Quad 19  
Date



## EXHIBIT C

### CONDITIONS OF APPROVAL

#### ALL PETITIONS

1. All previous conditions of approval applicable to the subject property, as contained in Resolution R-2006-0152 (Control 85-113), Resolution R-2006-2056 (Control 85-113), Resolution R-94-12 (Control 85-113) are hereby revoked. (DATE: MONITORING - Zoning)

2. Development of the site is limited to the site design approved by the Board of County Commissioners. The approved Preliminary Site Plan is dated July 14, 2008. All modifications must be approved by the Board of County Commissioners unless the proposed changes are required to meet conditions of approval or are in accordance with the ULDC. (ONGOING: ZONING - Zoning)

#### ARCHITECTURAL REVIEW

1. At time of submittal for final Development Review Officer (DRO) approval, the architectural elevations for all buildings shall be submitted simultaneously with the site plan for final architectural review and approval. Elevations shall be designed to be consistent with Article 5.C of the ULDC. Development shall be consistent with the approved architectural elevations, the DRO approved site plan, all applicable conditions of approval, and all ULDC requirements. (DRO: ARCH REVIEW - Zoning)

#### ENGINEERING

1. In order to comply with the mandatory Traffic Performance Standards, the Property owner shall be restricted to the following phasing schedule:

A) No Building Permits for the site may be issued after January 1, 2009. A time extension for this condition may be approved by the County Engineer based upon an approved Traffic Study which complies with Mandatory Traffic Performance Standards in place at the time of the request. This extension request shall be made pursuant to the requirements of Article 2, Section E of the Unified Land Development Code. (DATE: MONITORING-Eng)

#### 2. CORRIDOR CONVEYANCE OF ROAD RIGHT OF WAY

The property owner shall provide to the Palm Beach County Land Development Division a road right of way deed and all associated documents as required by the County Engineer for:

- Hypoluxo Road 55 feet from centerline
- High Ridge Road 40 feet from centerline

All right of way deed(s) and associated documents shall be provided and approved prior to June 1, 2009 or prior to the issuance of a Building Permit whichever shall first occur.

Right of way conveyance shall be along the entire frontage and shall be free of all encroachments and encumbrances. Property owner shall provide Palm Beach County with sufficient documentation acceptable to the Right of Way Acquisition Section to ensure that the property is free of all encumbrances and encroachments. The Grantor further warrants that the property being conveyed to Palm Beach County meets all appropriate and applicable environmental agency requirements. In the event of a determination of contamination which requires remediation or clean up on the property now owned by the Grantor, the Grantor agrees to hold the Grantee harmless and shall be responsible for all costs of such clean up, including but not limited to, all applicable permit fees, Engineering or other expert witness fees including Attorney's fees as well as the actual cost of the clean up. Thoroughfare Plan Road right-of-way conveyances shall be consistent with Palm Beach County's Thoroughfare Right of Way Identification Map and shall include "Corner Clips." The Property Owner shall not record these required deeds or related documents. After final acceptance, Palm Beach County shall record all appropriate deeds and documents. (DATE/BLDG. PERMIT: MONITORING-Eng)

3. Prior to issuance of the first building permit, the property owner shall provide a temporary roadway construction easement along Hypoluxo Road to Palm Beach County. This roadway construction easement shall contain an isosceles trapezoid connecting the required corner clips across this property owner's entrance road right of way. Construction within this easement shall conform to Palm Beach County Standards. The Property Owner shall not record these required easements or related documents. After final acceptance of the location, legal sketches and dedication documents, Palm Beach County shall record all appropriate deeds and documents. (BLDG PERMIT: MONITORING-Eng)

4. The Property owner shall construct:

- a right turn lane east approach on Hypoluxo Road at the project's entrance. The length of this turn lane shall be a minimum of 280 plus a taper length of 50 feet or as approved by the County Engineer.

- a left turn lane north approach on High Ridge Road at the project's full access driveway by restriping the existing left turn lane and extending it.

This construction shall be concurrent with the paving and drainage improvements for the site. Any and all costs associated with the construction shall be paid by the property owner. These costs shall include, but are not limited to, utility relocations and acquisition of any additional required right-of-way.

a. Permits required from Palm Beach County for this construction shall be obtained prior to the issuance of the first Building Permit. (BLDG PERMIT: Monitoring-Eng)

b. Construction shall be completed prior to the issuance of the first Certificate of Occupancy. (CO: MONITORING-Eng)

5. Landscape Within the Median of Hypoluxo Road

A. The Property Owner shall design, install and perpetually maintain the median landscaping within the median of all abutting right of way of Hypoluxo Road. This landscaping and irrigation shall strictly conform to the specifications and standards for the County's Only Trees, Irrigation, and Sod (OTIS) program. Additional landscaping beyond OTIS requires Board of County Commissioners approval. Median landscaping installed by Property Owner shall be perpetually maintained by the Property Owner, his successors and assigns, without recourse to Palm Beach County, unless the Property Owner provides payment for maintenance as set forth in Paragraph D below. (ONGOING)

B. The necessary permit(s) for this landscaping and irrigation shall be applied for prior to the issuance of the first building permit. (BLDG PERMIT: MONITORING-Eng)

C. All installation of the landscaping and irrigation shall be completed prior to the issuance of the first certificate of occupancy. (CO: MONITORING -Eng)

D. At Property Owner's option, when and if the County is ready to install OTIS on the surrounding medians of this roadway adjacent to the Property Owner installed landscaping, payment for the maintenance may be provided to the County. The payment shall be in the amount and manner that complies with the schedule for such payments that exists on the date payment is made. Once payment has been provided, Palm Beach County shall assume the maintenance responsibility for the OTIS landscaping and irrigation that has been installed by the Property Owner. The Property Owner shall first be required to correct any deficiencies in the landscaping and irrigation. This option is not available to medians with additional landscaping beyond OTIS standards, unless those medians are first brought into conformance with OTIS standards by the Property Owner. (ONGOING: ENGINEERING-Eng)

E. Alternately, at the option of the Property Owner, and prior to the issuance of a Building

Permit, the Property Owner may make a contribution to the County's Only Trees Irrigation and Sod, OTIS program, unincorporated thoroughfare beautification program. This payment, for the County's installation of landscaping and irrigation on qualifying thoroughfares shall be based on the project's front footage along Hypoluxo Road. This payment shall be in the amount and manner that complies with the schedule for such payments as it currently exists or as it may from time to time be amended. (ONGOING:ENGINEERING-Eng)

6. Prior to the issuance of a building permit the property owner shall provide to Palm Beach County Land Development Division by warranty deed additional right of way for the construction of a right turn lane on Hypoluxo Road at the project's entrance road. This right-of-way shall be a minimum of 280 feet in storage length and a taper length of 50 feet or as approved by the County Engineer. This additional right of way shall be free of all encumbrances and encroachments and shall include "Corner Clips" where appropriate as determined by the County Engineer. Property owner shall provide Palm Beach County with sufficient documentation acceptable to the Right of Way Acquisition Section to ensure that the property is free of all encumbrances and encroachments. The Property Owner shall not record these required easements or related documents. After final acceptance of the location, legal sketches and dedication documents, Palm Beach County shall record all appropriate deeds and documents (BLDG PERMIT: MONITORING-Eng)

#### LANDSCAPE - STANDARD

1. Prior to the issuance of a building permit, the property owner shall submit a Landscape Plan and/or an Alternative Landscape Plan to the Landscape Section for review and approval. The Plan(s) shall be prepared in compliance with all landscape related conditions of approval as contained herein. (BLDG PERMIT: LANDSCAPE - Zoning)

2. Field adjustment of plant material locations may be permitted to provide pedestrian sidewalks/bike paths and to accommodate transverse utility or drainage easements crossings and existing vegetation. (BLDG PERMIT: LANDSCAPE - Zoning)

3. All landscape focal points shall be subject to review and approval by the Landscape Section and reflected on the Regulating Plan prior to final approval by the Development Review Officer (DRO). (DRO: LANDSCAPE - Zoning)

4. Special planting treatment shall be provided at the intersection of High Ridge Road and Hypoluxo Road. Planting shall consist of the following:

- a. a minimum of three (3) specimen palm (Bismarck, Canary, Royal, Phoenix, or other species that is acceptable to the Landscape Section);
- b. a minimum of five (5) flowering trees; and
- c. appropriate shrub or hedge materials and ground cover. (BLDG PERMIT: LANDSCAPE - Zoning)

#### PARKING

1. The parking area along the north property line shall be used for employee parking and deliveries only. Appropriate signs shall be posted restricting this area to employee parking and deliveries only. (ONGOING: CODE ENF - Zoning)

#### PLANNING

1. Prior to final approval by the Development Review Officer (DRO), a complete Certificate to Dig shall be submitted to the County Archaeologist. (DRO: PLANNING-Planning)

## SIGNS

1. Freestanding signs fronting on High Ridge Road shall be limited as follows:
  - a. maximum sign height, measured from finished grade to highest point - six (6) feet;
  - b. maximum sign face area per side - ninety (90) square feet;
  - c. maximum number of signs - one (1);
  - d. style - monument style only; and,
  - e. location - a minimum of one hundred (100) feet from the north property line. (BLDG PERMIT: BLDG - Zoning)

## USE LIMITATIONS

1. Storage or placement of any material, refuse, equipment or debris shall not be permitted in the rear of the facility or on the property. (ONGOING: CODE ENF - Zoning)

## COMPLIANCE

1. In granting this approval, the Board of County 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; 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 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 Conditional Use, Type II Variance, 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.

Departmental administrative actions made pursuant to this condition may be appealed as provided in the Unified Land Development Code (ULDC), as amended. Appeals of any revocation of a Conditional Use, Type II Variance, Development Order Amendment or other actions based on a Zoning Commission decision shall be by petition for writ of certiorari to the Circuit Court, Appellate Division, 15th Judicial Circuit of Florida. (ONGOING: MONITORING - Zoning)