

**PALM BEACH COUNTY
PLANNING, ZONING AND BUILDING DEPARTMENT
ZONING DIVISION**

Application No.: ZV/ABN/DOA/W-2022-01312
Application Name: Posh Hospitality No. 3
Control No./Name: 1977-00031 (Posh Hospitality No. 3)
Applicant: Restoration Property Holdings Inc.
Posh Hospitality No. 3, Congress Avenue LLC
Owners: Restoration Property Holdings Inc
Agent: Dunay, Miskel and Backman, LLP - Beth Schrantz, Ele Zachariades
Telephone No.: (786) 763-0565 , (561) 405-3349
Project Manager: Jerome Ottey, Senior Site Planner

Title: a Type 2 Variance **Request:** to reduce the lot size, and the front and side street setbacks on 2.78 acres

Title: a Development Order Abandonment **Request:** to abandon a Hotel use on 2.48 acres

Title: a Development Order Amendment **Request:** to reconfigure the Site Plan, add land area and access points; and to delete square footage on 2.78 acres

Title: a Type 2 Waiver **Request:** to allow an extension of the hours of operation for a Non-Residential use located within 250 feet of a parcel of land with a residential future land use designation or use on 2.78 acres

APPLICATION SUMMARY: The proposed requests are for the 2.78-acre Posh Hospitality No. 3 Development. The site was last seen by the Board of County Commission (BCC) on October 25, 2007 for a rezoning to Multiple Use Planned Development (MUPD) and a Requested Use to allow a Hotel. The Development Order was never implemented, and is currently developed with a Single Family Home. Because the prior requests was not implemented, some of the previously approved requests have expired and new requests are required.

The requests will abandon the previously approved Requested Use for a Hotel as the Code has been revised to allow the use within the current district without the additional Use approval. The proposed requests would allow for the modification of the development, adding land area, reducing the size of the hotel, and reconfiguring the site elements. Additionally, the Type 2 Variances propose to allow a reduction in the lot size, and the front and side street setbacks. Following certification and scheduling of this application for a public hearing, the Applicant requested a withdrawal of the subdivision variance The Preliminary Site Plan (PSP) indicates one building with a total of 62,044 sq. ft. of Hotel use. A Type 2 Waiver will allow an extension of the hours of operation. A total of 132 parking spaces are proposed, with access points to the site from Congress Avenue and Kentucky Street.

SITE DATA:

Location:	Southeast corner of Kentucky Street and South Congress Avenue
Property Control Number(s)	00-43-44-05-08-002-0010; 00-43-44-05-08-002-0230 00-43-44-05-08-002-0070; 00-43-44-05-08-002-0110 00-43-44-05-08-002-0130
Existing Future Land Use Designation:	Commercial High, with an underlying MR-5 (CH/5)
Existing Zoning District:	Multiple Use Planned Development District (MUPD)
Total Acreage:	2.78 acres
Tier:	Urban/Suburban
Overlay District:	Urban Redevelopment Area Overlay (URAO), Revitalization, Redevelopment, and Infill Overlay (RRIO)
Neighborhood Plan:	N/A
CCRT Area:	Palm Acres Estates-Congress Meadows
Municipalities within 1 Mile	Cloud Lake, Glen Ridge, Lake Clarke Shores, Palm Springs, West Palm Beach
Future Annexation Area	Glen Ridge, Lake Clarke Shores, West Palm Beach
Commission District	District 3, Commissioner Michael A. Barnett

RECOMMENDATION: Staff recommends approval of the requests subject to the Conditions of Approval as indicated in Exhibits C-1 through C-3.
ACTION BY THE ZONING COMMISSION (ZC): *Scheduled August 3, 2023*

PUBLIC COMMENT SUMMARY: At the time of publication, Staff had received no contacts from the public regarding this application.

PROJECT HISTORY:

Control Number	Application No.	Request	Resolution	Approval Date
1977-00031	PDD/R-2006-00953	To allow a Requested Use of a Hotel	R-2007-1884	Oct. 25, 2007
		An Official Zoning Map Amendment for a rezoning from the General Commercial (CG) Zoning District to the Multiple Use Planned Development (MUPD) Zoning District	R-2007-1883	Oct. 25, 2007
	ZV-2007-00016	To allow the elimination of frontage requirement along an arterial or collector street for a CH-MUPD; a reduction in lot size; a reduction in lot width; an increase in Floor Area Ratio; an increase in Building Coverage; a reduction in front setback; a reduction in side street setbacks; a reduction in side setbacks; an elimination of hours of operations limit, and an elimination of right-of-way buffers	ZR-2007-00036	June 7, 2007
	SE-1977-00031	To revoke a Special Exception for an Automobile Rental Facility	R-1988-0140	Nov. 2, 1988
		A Special Exception to allow an Automobile Rental Facility	R-1977-0338	April 5, 1977
1975-00135	Z-1975-00135	An Official Zoning Map Amendment to allow a rezoning from the Residential Single Family (RS) Zoning District in part to the Commercial General Zoning District and the further Special Exception to allow a Planned Commercial Development including the continued operation of an existing Automobile Service Station and a Motel	R-1976-0490	June 8, 1976

TYPE 2 VARIANCE SUMMARY: The Applicant is proposing a new infill development within the Multiple Use Planned Development Zoning District. The proposed request includes a Development Order Amendment to reconfigure the Site Plan, add land area and access points, and to delete square footage. A total of five lots are proposed to be combined to make up the 2.78-acre development, however, some property development regulations required by the MUPD Zoning District will not be met as outlined below.

ULDC Article	Required	Proposed	Variance
V1 - 3.E.3.D MUPD Property Development Regulations	Minimum 5 acres	2.78 acres	Reduction of 2.22 acres
V2 - 3.E.3.D MUPD Property Development Regulations	45 foot side street setback	26.6 feet side street setback from Kentucky Street	Reduction of 18.4 feet
V3 - 3.E.3.D MUPD Property Development Regulations	45 foot front setback	26 feet	Reduction of 19 feet

FINDINGS:

Type 2 Variance Standards

When considering a Development Order application for a Type 2 Variance, the Zoning Commission shall consider Standards a through g listed under Article 2.B.7.E.6, Standards for Zoning or Subdivision Variance. The Standards and Staff Analyses are as indicated below. A Type 2 Variance that fails to meet any of these Standards shall be deemed adverse to the public interest and shall not be approved.

a. *Special conditions and circumstances exist that are peculiar to the parcel of land, building, or structure, that are not applicable to other parcels of land, structures, or buildings in the same district:*

V1 - YES – The development is proposed on five parcels which will be combined for a total acreage of 2.78 acres. The Applicant has also sought to abandon Oklahoma Street to the south to extend the south property line, thereby, increasing the size of the subject site. Per Table 3.E.3.D MUPD Property Development Regulations, the minimum lot size required for the MUPD Zoning District is five acres. The Applicant is requesting a Variance to allow a deviation from the five acre minimum which will allow for the development of the site with the proposed Hotel use. The subject site is located within the Urban Redevelopment Area Overlay (URAO) and the Redevelopment, and Infill Overlay (RRIO), which currently have a limited number of available lots that are a minimum five acres. With the main focus of the Overlays being to provide infill development and redevelopment, and allow for investment and reinvestment, the special condition and circumstance related to the size of the lot warrants a deviation from the minimum lot size of five acres to allow for the development of the subject site. The intent of the Applicant to combine five small commercial infill lots to accommodate the development, aligns with the purpose and intent of the URAO and RRIO, and offsets the possible Variance request pertaining to the minimum lot size.

V1 and V2 – YES – The Applicant is requesting a Variance to reduce the setbacks for the front abutting Congress Avenue and the side street, abutting Kentucky Street. The special circumstance that exist for this development is that the future combination of the five parcels will create a L-shaped lot. As residential uses currently exist to the east, development of the building is limited and concentrated to the west portion of the lot, abutting Congress Avenue. The Applicant seeks to employ measures to mitigate the effects the proposed use may have on the adjacent residential uses to the east, through the orientation of the proposed building so the longest side fronts Congress Avenue. This allows for increased separation from the residential uses and allows for adequate spacing to accommodate the buffer width, a Retention Pond and parking spaces to the east. It is also noteworthy that being within the MUPD Zoning District and, the URAO and RRIO, the regulations of the MUPD Zoning District prevails per Art. 3.E.3.A.1.3., The proposed development however, is consistent with the requirement of the URAO in regards to the orientation (longest side fronting the street) and reduced front setback.

b. *Special circumstances and conditions do not result from the actions of the Applicant:*

V1-V3 – YES – The special circumstance and condition of the shape and size of the subject site is not as a result of the actions of the Applicant. This is as a result of the existing conditions of the URAO and RRIO where there are a limited number of larger lots that meet the minimum requirements of the zoning district. As mentioned, the Applicant intends to combine five lots and abandon Oklahoma Street to add square footage for development and offset the possible Variances that may be sought. The actions of the Applicant has, therefore, reduced the possible deficiencies in meeting the requirements of the zoning district.

c. *Granting the Variance shall not confer upon the Applicant any special privilege denied by the Plan and this Code to other parcels of land, buildings, or structures, in the same district:*

V1 – V3 – YES - Granting this Variance will allow the parcel to be developed with a Hotel Use within the MUPD Zoning District. A Hotel is a Permitted by Right use on a parcel within the MUPD Zoning District, with a Commercial High (CH) future land use designation. For this particular development, the obstacle to developing the subject site with the Hotel use is the minimum requirements related to the lot size and, front and side street setbacks. Granting the Variance will, therefore, not confer any special privilege upon the Applicant and will allow the subject site to be developed with a Hotel use similarly as other land with the MUPD zoning designation.

d. *Literal interpretation and enforcement of the terms and provisions of this Code would deprive the Applicant of rights commonly enjoyed by other parcels of land in the same district, and would work an unnecessary and undue hardship:*

V1 to V3 – YES – Literal interpretation and enforcement of the Code would make it impossible for the site to be developed within the MUPD Zoning District. As the minimum requirement for the lot size of five acres is not being met, the project would not be able to be developed with the proposed use. The setbacks required for the MUPD Zoning District are 30 feet from the front and side street property lines. Due to the proposed building height the required setback need to be increased to 45 feet because of the height of the building being proposed to be 50 feet. Per Art. 3.D.1.E.2., Multifamily, Non-Residential Districts, and PDDs, the setback shall be increased by one foot for each additional one foot in height or fraction thereof over 35 feet. This increase in setback would again make it impossible for the site to be developed for the proposed use within the MUPD Zoning District and would make it difficult for the development to align with the intent and purpose of the URAO in encouraging redevelopment and revitalization of commercial corridors, and the recognition of various challenges and constraints, such as the availability of larger lots to accommodate such a development. Literal interpretation and enforcement of the Code would therefore, work an unnecessary and undue hardship on the Applicant.

e. *Granting the Variance is the minimum Variance that will make possible the reasonable use of the parcel of land, building, or structure:*

V1 - V3 – YES – The Applicant has actively employed measures to increase the size of the subject site through the combination of lots and the abandonment of Oklahoma Street. These efforts have reduced the number of possible Variances. The initial submission of the application included a total of eight Variance requests, which included deviations from the minimum lot width and frontage, side street setbacks from Oklahoma Street and minimum parking requirements. Through the Applicant’s efforts in seeking to abandon Oklahoma Street, resulting in the increase in the lot side and lot width, the number of Variances decreased to four. Granting the Variances is therefore, the minimum that will make possible the reasonable use of the parcel of land.

f. *Granting the Variance will be consistent with the purposes, goals, objectives, and policies of the Plan and this Code:*

V1 - V3 – YES – The requested Variances are required to feasibly develop the subject site with the proposed Hotel use. The proposed development meets the purpose of the URAO and RRIO to encourage redevelopment and revitalization of commercial corridors that recognize various opportunities, challenges, and constraints. The URAO allows for certain standards to be altered through a Waiver process. The allowance of deviations through the Waiver process shows that the URAO recognizes that infill development may pose challenges as parcels within the Overlay may not be able to meet all property development regulations. As the MUPD regulations apply to this proposed development, the standards related to lot size and setbacks are being requested to be altered through the Type 2 Variance process. The Variance requests are therefore, consistent with the purposes, goals, objectives and policies of the Plan and the Code as both documents seek to provide for and encourage infill development or redevelopment with the boundaries of the URAO and the RRIO.

g. *Granting the Variance will not be injurious to the area involved or otherwise detrimental to the public welfare:*

V1 - V3 – YES – The requested Variances to reduce the minimum lots size, and the setbacks for the front and side street within the MUPD Zoning District will not be injurious to the area involved or otherwise detrimental to the public welfare. The Variance to reduce the lot size will allow the development of the Hotel use on a lot less than five acres. This allowance theoretically would have an effect on the adjacent residential uses, in terms of the greater probability for building to be located in closer proximity to the residential uses to the east, however, the Applicant has configured the Site Plan to increase the separation between the uses and minimize any possible effects through the proposed location of the building being closer to the R-O-W, the location of the parking spaces to the east of the building, and the width of the landscape buffer along the eastern property lines. The reduction in the front and side street setbacks will have no effect on the residential use or the commercial use to the north, adjacent to Kentucky Avenue.

FINDINGS:

Development Order Abandonment:

A DO for a Conditional Use or similar DO granted under Zoning Resolution No. 3-57, Ordinance No. 73-2, Ordinance No. 92-20, or Ordinance No. 2003-067, as amended, may be abandoned according to the procedures in this Section and pursuant to Art. 2.B, Public Hearing Processes. DOs that are partially or fully implemented, or have not been implemented may be abandoned subject to the requirements of this Section. When considering an ABN application, the BCC and ZC shall consider the Standards indicated in Article 2.B.7.F.6, Standards.

As part of the request, the Applicant is seeking an abandonment of a Development Order granted for a Requested Hotel use, previously approved under Resolutions R-2007-1884 on May 25, 2007. With the proposed Development Order Amendment (DOA) described below, it is the intent of the Applicant to reconfigure the Site Plan to allow for a revised Permitted by Right Hotel use with significantly less square footage.

a. Consistency with the Plan - *The proposed abandonment is consistent with the Plan.*

The proposed abandonment of the Resolution that approved the Requested Hotel use will not create any inconsistencies with the Goals, Objectives and Policies of the Comprehensive Plan. The Applicant is requesting a new use as analyzed under the Findings for the Development Order Amendment.

b. Consistency with the Code - *The proposed abandonment, is not in conflict with any portion of this Code, and is consistent with the stated purpose and intent of this Code. The abandonment of a DO does not create any new non-conformities.*

The proposed abandonment is not in conflict with any portion of this Code, and is consistent with the stated purpose and intent of this Code. The abandonment of the Resolution that approved the DO for the previous Hotel use does not create any non-conformities as the subject site is currently undeveloped, and the previous Development Order was never implemented. The approval process for a Hotel within the MUPD Zoning District with a Commercial High (CH) future land use designation was also changed as part of the Use Regulations Projects, Ordinance 2017-007, to a Permitted by Right use. The proposed development will comply with all requirements of the ULDC and Conditions of Approval of the new Development Order. Variance and Waivers have been requested where the requirements of the Code cannot be met.

c. Adequate Public Facilities – *The proposed abandonment of the DO shall not impact the approved requirements of Art. 2.F, Concurrency (Adequate Public Facility Standards) Art. 2.F, Concurrency (Adequate Public Facility Standards). When a non-implemented DO is abandoned, all concurrency affiliated with the DO is no longer valid. For implemented DOs, concurrency for the remainder of the nonaffected area shall remain. Concurrency for any new uses on the subject property shall be subject to the requirements of Art. 2.F, Concurrency (Adequate Public Facility Standards).*

The proposed abandonment of the Resolution will not impact the requirements of Art. 2.F, Concurrency (Adequate Public Facility Standards). The Applicant has requested a new Concurrency Approval for the proposed development.

d. Changed Conditions or Circumstances - *There are demonstrated changed site conditions or circumstances provided by the Applicant's Justification Statement that necessitate the abandonment. Abandonment of the Resolution approving the DO will not impact other DOs approved on the same site. There is no reliance by other parties for additional performances, or tasks to be implemented, that were required in the original DO.*

The subject site received approval for a Requested Use of a Hotel, within the MUPD Zoning District. The Applicant states in the Justification Statement that the abandonment will provide a more appropriate Hotel development for the property. The property has been vacant and underutilized as the DO for the previous Hotel approval was never implemented after being approved, more than 15 years. The growth of the area has resulted in a need for additional commercial lodging uses which is the reason for the Applicant's request to develop the parcels and, provide better and improved services to the community. The Applicant has adequately demonstrated the need for the proposed change and the abandonment of the Resolution will not impact other DOs approved on the site. The only other approved DO is a Single Family Use which will be demolished. There is also no reliance by other parties for additional performances, or tasks to be implemented that were required in the original DO.

FINDINGS:

Development Order Amendment:

When considering a Development Order application for a Rezoning to a PDD or a TDD, a Conditional Use, excluding Conditional Use requests for Density Bonus pursuant to Art. 5.G.1, Workforce Housing Program (WHF), or a Development Order Amendment, the BCC and ZC shall utilize the Standards a – h listed in Article 2.B.7.B, Standards. The Standards and Staff Analyses are indicated below. A Conditional Use, Rezoning to PDD or TDD, or Development Order Amendment that fails to meet any of these Standards shall be deemed adverse to the public interest and shall not be approved.

a. Consistency with the Plan – *The proposed use or amendment is consistent with the purposes, goals, objectives and policies of the Plan, including standards for building and structural intensities and densities, and intensities of use.*

○ *Consistency with the Comprehensive Plan:* The proposed amendment is consistent with the Goals, Objectives and Policies of the Comprehensive Plan, including previous Land Use Amendments, densities and intensities of use.

○ *Prior Land Use Amendments:* A portion of the site was the subject of a Small Scale Future Land Use Amendment known as Congress/Summit Hotel (SCA 2006-030). The amendment changed the future land use designation from Medium Residential, 5 units per acre (MR-5) to Commercial High with an underlying 5 units per acre (CH/5) on a 0.16-acre parcel (PCN 00-43-44-05-08-002-0130) at the easternmost portion of the current project, via Ordinance ORD 2007-021. Although the amendment granted the parcel the CH/5 future land use designation, it was conditioned as follows:

- *the 0.16-acre parcel shall only be used for landscaping, drainage, and parking purposes (a parking structure would be allowed).*

To place this amendment and condition into context, the Congress/Summit Hotel amendment was submitted during the County's Urban Redevelopment Area (URA) Master Plan process, but prior to any amendments to the Plan or ULDC had taken place to implement the URA Master Plan. The corresponding zoning action, the Morgan Hotel MUPD, proposed a 10-story hotel, with a 5-level parking structure. The parking structure was proposed for a portion of the 0.16-acre parcel. This proposal was generally consistent with the vision of the URA Master Plan and the concepts therein, but ultimately was more intense than the final regulations adopted by the County over the 2007-2012 timeframe for the URA's regulatory implementation. The proposed project complies with this adopted land use ordinance condition as the area restricted to landscaping, drainage and parking is depicted on the site plan as having landscape buffer and retention only, in the easternmost fifty (50) feet that fronts on the Oklahoma Street alignment (the parcel that is subject to the restriction).

The balance of the site was also subject to prior County Initiated Large Scale Future Land Use Amendments. In 2002, the County adopted the Commercial Categories amendment (LGA 2002-026), via Ordinance ORD 2002-087, which assigned 14.6 acres of land with the Commercial with an underlying 5 units per acre (C/5) future land use designation to the Commercial High, with an underlying 5 units per acre (CH/5) future land use designation (PCNs ending in -0230, -0010, -0070, and -0110). Furthermore in 1999, the County adopted County Initiated Corrective Amendment 99-CHX (65b), via Ordinance ORD 1999-070, removed the cross-hatching from Commercial with Cross-Hatching and an underlying 5 units per acre (CX/5) to Commercial with an underlying 5 units per acre (C/5) on 0.33-acres (PCN 00-43-44-05-08-002-0110). There were no conditions in the adopting ordinances for these amendments.

It is also important to note that the five parcels that are the subject of the current request were originally included as part of the County Initiated Large Scale Future Land Use Amendment, URA Congress Avenue (LGA 2008-032b), that would have amended the future land use designation to Urban Infill (UI) to implement the URA's Congress Avenue Priority Redevelopment Area (PRA) provisions. However, the owner at that time availed themselves of the stated opt-out provision for land-owners that did not want to pursue the PRA redevelopment incentives. Thus, the five parcels retained their CH/5 future land use designation. The five parcels remain eligible for a future amendment to the UI land use designation.

- *Relevant Comprehensive Plan Policies:* The Project complies with concepts adopted by the County within the Plan's Future Land Use Element (FLUE) Objective 1.2.2, the project is consistent with the purpose of the URA as it is an infill redevelopment project that promotes economic growth, creates investment and reinvestment in the area, and discourages urban sprawl by directing development where resources exist, i.e., along the Congress Avenue Corridor. Although it does not take advantage of the redevelopment incentives offered in the PRA corridors, the project furthers the intent of the URA by preserving and respecting the existing neighborhood to the east and maintaining the character and quality of life for those within the neighborhood by focusing development to the Congress Avenue frontage.

Typically the Planning Division applies FLUE Policy 1.2.2-h to all projects within the unincorporated portion of the approximately 35-square mile area of the URA, without regard for the location in a PRA corridor. Policy 1.2.2-h states: "*The County shall require inter-connectivity in the URA between complementary neighboring land uses for both vehicular and pedestrian cross access, which shall be implemented through criteria established in the ULDC.*" However, given the configuration of the parcels involved, that a continuous pedestrian and vehicular connection is provided by the project between Oklahoma Street and Kentucky Street, and that any other adjacent lots have residential future land use designations and are either developed as single family detached homes or vacant undeveloped parcels, the Planning Division determined that the intent of the policy is met, and no further options for interconnectivity are required.

- *Intensity:* The request is to develop a 62,044 square feet (sq. ft.) hotel, which equates to a FAR of approximately 0.51 (62,044 sq. ft. of development/ 121,543 sq. ft. or 2.79 acres = 0.51). The maximum Floor Area Ratio (FAR) of .85 (w/MUPD) is allowed for the subject future land use designation in the Urban Suburban Tier (121,543 sq. ft. or 2.79 acres x .85 maximum FAR = 103,312 sq. ft. maximum).

Current R-O-W abandonment area is 0.28 acres (12,104 SF). Total R-O-W area upon completion of abandonment is .29 acres (12,523 SF) per survey. Final site plan to be updated.

- *Special Overlay District/ Neighborhood Plan/Planning Study Area:* The request is located within the Urban Redevelopment Area (URA), the Palm Acres Estates-Congress Meadows CCRT area and Revitalization, Redevelopment, and Infill Overlay (RRIO). The request is consistent with the Comprehensive Plan's URA. The analysis for each planning area is provided below:

- *Urban Redevelopment Area (URA)* - The Project is consistent with the purposes of the URA as it is an infill redevelopment project that promotes economic growth, creates investment and reinvestment in the area, and discourages urban sprawl by directing development where resources exist.

- *The Palm Acres Estates-Congress Meadows CCRT Area - The Applicant reported holding a community meeting with the neighborhood on March 1, 2023 to discuss the project, and that there were no questions or discussion at the meeting.*
- *Revitalization, Redevelopment, and Infill Overlay (RRIO) - The Project is designed to provide a transition from the highly travelled and intense Congress Avenue corridor to the existing residential uses to the east with the higher intensity hotel use located along Congress Avenue and passive drainage areas and landscape buffer located to the east to ensure an appropriate transition*
- *Compatibility: County Direction #4 establishes that Land Use Compatibility is one of the eighteen directions that are the basis for the Goals, Objectives and Policies of the Comprehensive Plan. The directive reads as follows:*
 - *Land Use Compatibility. Ensure that the densities and intensities of land uses are not in conflict with those of surrounding areas, whether incorporated or unincorporated.*

Several policies within the Plan's Future Land Use Element further address compatibility through the ULDC and development review process. FLUE Policy 2.2-c establishes that the ULDC is consistent with the Plan, and that consistency shall ensure compatibility with adjacent future land uses. Further, FLUE Policy 4.3-i indicates (in part) that the Development Review process shall also consider the compatibility of the density or intensity of proposed development with adjacent future land uses. The Planning Division has reviewed the proposed development application and determined the intensity is compatible with adjacent and surrounding land uses.

- b. Consistency with the Code - *The proposed amendment is not in conflict with any portion of this Code, and is consistent with the stated purpose and intent of this Code.***

The subject site was approved in 2007 as a Requested use to allow a 10 story, 108,000 sq. ft. Hotel with 81 rooms and a 31,188 sq. ft. parking garage through Resolution R-2007-1884. The approval process for a Hotel within the MUPD Zoning District with a Commercial High (CH) future land use designation was changed as part of the Use Regulations Projects, Ordinance 2017-007, to a Permitted by Right use. The current approval for the Hotel is therefore, Permitted by Right. The proposed Development Order Amendment (DOA) will reconfigure the Site Plan that was presented to the Board of County Commissioners (BCC). There is no Final Site Plan for the previous approval, however, as the PSP was presented to the Board at the October 25, 2007 BCC Public Hearing, the PSP has to be reconfigured to reflect the newly proposed development.

The request will modify the BCC approved Site Plan and will add approximately 0.3 acres of land area as a result of the abandonment of Oklahoma Street for a total of 2.78 acres total. An access point has been added from Congress Avenue instead of the two access points as previously approved. Access from Kentucky Avenue remains with this application. With the abandonment of Oklahoma Street, access from the south will be directly from Congress Avenue. The Preliminary Site Plan (PSP) indicates the following; a 4 story, 62,044 sq. ft. Hotel with 122 rooms, 132 parking spaces, an amenity space with a swimming pool and a Retention Pond.

- *Property Development Regulations: The proposed development is subject to Table 3.E.3.D, MUPD Property Development Regulations with the proposed development being required to demonstrate how the minimum PDRs will be met. Staff has analyzed the provided plans and has determine that the proposal is in compliance with Table 3.E.3.D, MUPD except for the minimum requirements for lot size, and front and side street setbacks, for the which the Applicant has requested a Type 2 Variance*
- *Access and Circulation: The subject development proposes two access points: one from Kentucky Avenue to the north and the other from Congress Avenue to the southwest. Congress Avenue is a Collector Street, which satisfies the requirement of Art. 3.E.1.C.2.a., Access and Circulation. With the reconfiguration of the Site Plan, particularly with the removal of the parking structure, circulation throughout the site has improved and provides for simpler and safer vehicular and pedestrian circulation.*
- *Overlays: The subject site is within the URAO, however does not have to adhere to the requirements of the Overlay as the Zoning District is not Urban Infill (UI) or Urban Center (UC), per Art. 3.B.16.B.2., Priority Redevelopment Areas (PRAs). The Applicant has however, proposed the development consistent with certain requirements of the Overlay, particularly as it relates to the orientation of the building along the frontage and reduced front setbacks. The subject site is also within the RRIO and aligns with the intent to , to encourage revitalization, redevelopment, and infill in areas identified as a RRIO that are in need of assistance, per the Comprehensive Plan Sub-objective 1.2.1.*
- *Architectural Review: The Applicant has proposed one building with 62,044 sq. ft. Architectural Elevations have been submitted with this application and, will be reviewed and approved by the BCC. Figure*

5 depicts architectural elements proposed for the building such as plane breaks, canopies, exterior treatment and cornices.

- **Parking and Loading:** Table 6.B.1.B, Minimum Parking and Loading Requirements, indicates that a total of 153 parking spaces are required for a Hotel use. A total of 132 parking spaces are provided. Article 6.C.1.A.1.a allows a maximum of 15% reduction administratively through a Type 1 Waiver. It is the intention of the Applicant to request this Type 1 Waiver that would allow the reduction of 21 spaces. The Applicant has erroneously indicated on the PSP the 15% reduction to be a Type 1 Variance instead of a Type 1 Waiver. A Condition of Approval has been added for the PSP to be revised to reflect the parking reduction in as a Type 1 Waiver table. In addition two loading spaces are required based on the proposed square footage. The PSP indicates only one loading space. A Condition of Approval has been added for an additional loading space to be provided or a request be submitted for a reduction through the Type 1 Waiver process.

- **Landscape/Buffering:** The PSP indicates a 20 foot landscape buffer along the Right-of-Way of Congress Avenue and a 15 foot buffer along Kentucky Street. To the south, an eight foot Compatibility is proposed as it abuts the UI Zoning District. Along the eastern property lines that abut residential uses, 20 foot landscape buffers are required and proposed to mitigate the effects the Hotel may have on the residential uses. A Condition of Approval has been added for a wall to be constructed along the property lines adjacent to residential, as required pursuant to Table 7.C.2.C., Incompatibility Buffer Landscape Requirements, and for the PSP to be revised to reflect the correct buffer type. In addition to this the Applicant has provided the required landscape islands within the parking areas and foundation planting around the building. A Type 1 Waiver will be requested at the time of Final DRO to allow for a relocation of 50% of the required foundation planting from the east side of the building to the west. Staff has analyzed the proposed plan and has determined that it complies with the Landscape requirements as indicated in Article 7. Further analyses for compliance in regards to planting material will be done at time of Building Permit.

- **Signs:** The Applicant has submitted Preliminary Master Sign Plans (PMSP) (Figure 6) that meet the requirements of Article 8. The Applicant is proposing two Freestanding Signs: one fronting Congress Avenue and other fronting Kentucky Avenue. With the abandonment of Oklahoma Street and access to the site directly from Congress Avenue, a Condition of Approval has been added for the PMSP-1 to be revised to remove Oklahoma Street and extend the property line to the south, and remove all information related to a proposed Freestanding Sign along Oklahoma Street. Wall signs are also proposed along each façade of the Building. To eliminate the impact the proposed wall sign may have on the residential uses, a Condition of Approval has been added for the wall sign along the eastern façade of the building to be removed.

- **Variance and Waivers:** The Applicant has requested the following Variances:
Type 2 Variance to allow a reduction in lot size, and front and side Street setbacks;
Type 2 Waiver to allow for 24 hour operation, and;
Type 1 Waivers to relocate 50% of required foundation planting and reduction in the number of parking spaces

- **Billboard:** The vacant parcel closest to Congress Avenue is currently developed with a Billboard. Because the Applicant did not include the Billboard as part of the proposed Development Order, and has stated they will be removing it, they have been advised by Staff that a Special Permit and Demolition Permit will be required. The Applicant expressed no intention to relocate the Billboard. A Condition of Approval has been added to ensure the removal of the Billboard is processed accordingly.

c. Compatibility with Surrounding Uses – *The proposed use or amendment is compatible and generally consistent with the uses and character of the land surrounding and in the vicinity of the land proposed for development.*

The proposed DOA will allow for the development of five parcels with a Hotel use. The Hotel use is generally compatible and consistent with the uses and character of the land surrounding and in the vicinity of the subject site. To the west exists a Recreation Golf Course (Trump International Golf Course) use that may benefit from the accommodation and hospitality services of the proposed Hotel. To the north is a Vehicle Sales and Rental Use. To the south are vacant parcels with a current approval for Retail Gas and Fuel Sales with a Convenience Store. To the east and southeast are residential Single Family uses and an Institutional use, respectively. As the subject development is located within the URAO, the existing mix of commercial, institutional and residential uses along and in proximity to Congress Avenue is typical and provides a balance between housing, employment and commercial uses.

d. Design Minimizes Adverse Impact – *The design of the proposed use minimizes adverse effects, including visual impact and intensity of the proposed use on adjacent lands.*

The proposed DOA reconfigures the Site Plan to significantly reduce the square footage and reduce the intensity of the use. Six stories have been removed compared to the previously presented PSP (Figure 3) with no parking garage proposed, allowing for the removal of the five level structure. The heights of the

previously proposed Hotel building and Parking Garage would have resulted in the casting of significant shadow lines on the existing residential uses to the east. Per Art. 3.B.16.F.6.a.1).b), General, to avoid taller building casting shadow lines on existing residential uses, building height should be compatible with adjacent development. Being within the MUPD Zoning District, this requirement of the URAO does not have to be adhered to, however, the reconfiguration of the Site Plan to allow the proposed four story development aligns with the requirement and significantly reduces the potential for shadow lines be casted on the residential uses. The reconfiguration also allows development to be concentrated along Congress Avenue, increasing the separation from the residential uses. The proposed 20-foot landscape buffer width and the Retention Pond along the eastern property lines provides additional protection of the Residential. The design of the development through the DOA, therefore, minimizes adverse effects and visual impact and intensity of the proposed Hotel and adjacent lands.

e. Design Minimizes Environmental Impact – *The proposed use and design minimizes environmental impacts, including, but not limited to, water, air, stormwater management, wildlife, vegetation, wetlands and the natural functioning of the environment.*

○ **Vegetation Protection:** The site is vacant. An application for the Protection of Native Vegetation Approval may be required to be submitted prior to the final approval by the DRO, as indicated in Article 14.C.7.C.

○ **Site Contamination:** Based on the Phase I Environmental Site Assessment, dated August 18, 2022 prepared by HRP Associates, Inc., the number of installed USTs at the Site and the number of USTs removed from the Site is unknown- the lack of information is a potentially significant data gap with respect to the findings and conclusions of the Phase I report- thus, a Phase II Environmental Site Assessment shall be conditioned to be received prior to DRO approval. The property owner will need to work with the Florida Department of Environmental Protection to resolve the contamination issues, as per Chapter 62-780, F.A.C. During the DRO process, ERM will confirm that the applicant is coordinating with FDEP. NOTE: Facility ID: 9802905

○ **Wellfield Protection Zone:** This property is not located within Wellfield Protection Zone.

○ **Irrigation Conservation Concerns And Surface Water:** All new installations of automatic irrigation systems shall be equipped with a water sensing device that will automatically discontinue irrigation during periods of rainfall pursuant to the Palm Beach County Mandatory Year-Round Landscape Irrigation Conservation Measures Ordinance, Ordinance No. 2022-007. Any non stormwater discharge or the maintenance or use of a connection that results in a non stormwater discharge to the stormwater system is prohibited pursuant to Palm Beach County Stormwater Pollution Prevention Ordinance No. 93-15.

○ **Environmental Impacts:** There are no significant environmental issues associated with this petition beyond compliance with ULDC requirements.

f. Development Patterns – *The proposed use or amendment will result in a logical, orderly and timely development pattern.*

The proposed DOA will allow for the development of a use that may be beneficial to the existing Golf Course to the west and the Palm Beach International Airport to the north, through the provision of accommodation and hospitality services within a redevelopment area of the County. The Applicant states in their Justification Statement that the approval of the project will promote efficient use of land through infill development with a vibrant mix of complementary uses. The proposed DOA will result in a logical, orderly and timely development pattern that aligns with existing conditions within this acre of the County. The site has a commercial future land use and zoning, and is looking to implement a Development Order with a commercial use consistent with the pattern of the area.

g. Adequate Public Facilities – *The proposed amendment complies with Art. 2.F, Concurrency (Adequate Public Facility Standards).*

ENGINEERING COMMENTS:

The proposed 122-room hotel is expected to generate 877 net daily trips, 50 net AM peak trips, and 65 net PM peak hour trips. The build out of the project is assumed to be by 2027.

The impacts of this proposed project will have an insignificant impact (as per the definition in PBC Traffic Performance Standards) and therefore, meets the Traffic Performance Standards, without requiring the need for any roadway improvements.

ADJACENT ROADWAY LEVEL OF SERVICE (PM PEAK)
Traffic volumes are in vehicles per hour
Segment: Congress Ave from Summit Blvd to Gun Club Rd
Existing count: Northbound=1442, Southbound=2003

Background growth: Northbound=173, Southbound=209
Project Trips: Northbound=16, Southbound=17
Total Traffic: Northbound=1631, Southbound=2229
Present laneage: 3 in each direction
Assured laneage: 3 in each direction
LOS “D” capacity: 2680
Projected level of service: LOS D or better in both directions

DRAINAGE DISTRICT:

The subject development is located within the jurisdictions of Lake Worth Drainage District (LWDD). The Applicant’s Engineer states (Exhibit F), “...*The site is generally graded sloping from west to east and there is no apparent outfall. There is no existing stormwater infrastructure on-site and there is no existing environmental resource permit. There are inlets along S. Congress Avenue that may be used for drainage off-site. ... A dry detention pond shall be constructed along the east side of the site. Additional exfiltration trench may be proposed to meet SFWMD’s water quality and quantity requirements. The design storms are the 10 yr – 3 day, the 25 yr – 3 day, and the 100 yr – 3 day. Runoff shall be directed offsite via a pipe connection to one of the existing stormwater structures along S Congress Ave. The site does reside in the C-51 sub-basin and shall conform to the additional storage compensation requirements set forth in the SFWMD applicant handbook. The site will be graded and designed to prevent any negative impacts to existing surface water flows from adjacent properties. Best Management Practices will be applied wherever feasible....*” Prior to the issuance of any building permits the Applicant must obtain approval and any applicable permits.

PALM BEACH COUNTY HEALTH DEPARTMENT:

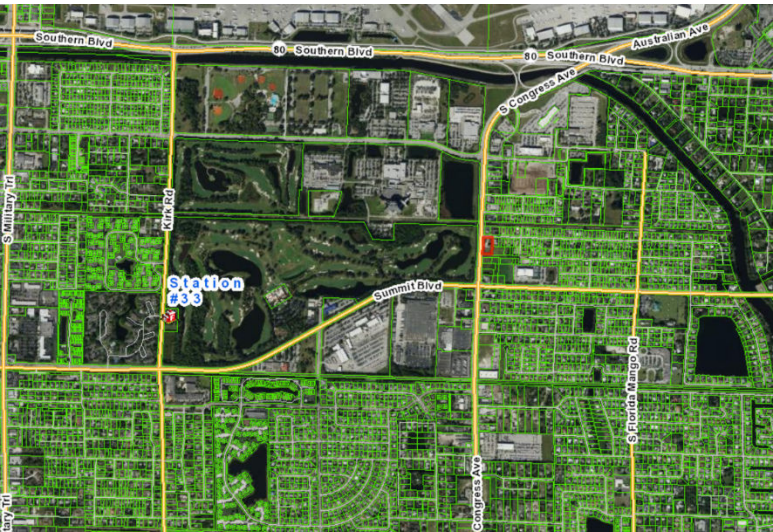
Staff has reviewed this application and have no comment

WATER AND WASTEWATER PROVIDER:

The Water and Wastewater provider will be Palm Beach County Water Utilities. The Applicant has provided a Utility Bill showing the existence of connection to the water and wastewater lines.

Prior to commencement of development the Property Owner will be required to hook up to the water and wastewater lines pursuant to the permits from PBCWUD

FIRE PROTECTION: Staff has reviewed this application and have no comment. The proposed development is located with the boundary of PBC Fire Station #33.



SCHOOL IMPACTS:

The School Board has no issues with the requests.

PARKS AND RECREATION:

This is a non-residential project, therefore the Parks and Recreation ULDC standards do not apply.

h. Changed Conditions or Circumstances – *There are demonstrated changed site conditions or circumstances provided by the Applicant’s Justification Statement that necessitate the amendment.*

The Applicant has stated in their Justification Statement that the growth of the area has resulted in an increased need for additional commercial lodging uses. The Applicant is therefore, seeking to develop the property to provide better and improved services to the community. The previous Hotel use was approved by the BCC in 2007, and to date there has been no development of the parcels included in the proposed development. With the Applicant’s statement for the need for the development as the County has grown, the amendment is necessary as the conditions and circumstances of the area and within the URAO has changed.

FINDINGS:

TYPE 2 WAIVER SUMMARY

ULDC Article	Required	Proposed	Waiver
5.E.5.A Hours of Operation - Proximity to Residential	Hours of Operation - 6:00 a.m. to 11:00 p.m. for a Non-residential use located within 250 feet of a residential FLU or use	24-hour operation	Extend the hours of operation to 24-hours (+7 hours)

Type 2 Waivers:

When considering a Development Order application for a Type 2 Waiver, the BCC shall consider the Standards listed under in Article 2.B.7.D.3, Standards for a Type 2 Waiver, and any other Standards specific to a Type 2 Waiver. The Standards and Staff Analyses are indicated below. A Type 2 Waiver that fails to meet any of the Standards, shall be deemed adverse to the public interest and shall not be approved.

- a. ***The Waiver does not create additional conflicts with other requirements of the ULDC, and is consistent with the stated purpose and intent for the Zoning District or Overlay;***

YES: The purpose of limiting the hours of operation when a non-residential use is within 250 feet of a residential future land use designation or use is to provide protection to the residential use from the possible effects of the non-residential use. The Applicant has designed the project in a way to minimize the possible effects the Hotel use may have on the residential uses to the east, by providing additional protection to the uses, in keeping with the stated purpose and intent of the provision per Art. 5.E.5., Hours of Operation. The Applicant’s design for the Site includes the Hotel building being as far as possible away from the residential uses, adjacent to Congress Avenue, with parking spaces, drainage and landscaping separating the use from the neighborhood to the west. The proposed Type 3 Incompatibility Buffer along the eastern property line is required to be 20 feet in width per Art. 7.C.2.C., and also requires a 6-foot wall. A Condition of Approval has been added for the wall to be reflected on the Site Plan, along the property lines abutting residential. The Condition also allows the wall to be allowed to be constructed on the property line. Pines will be required to be installed within the buffer instead of Palms, per Condition of Approval. The Applicant has agreed for accessory uses and activities, such as delivery service, restaurant and the outdoor pool be limited to maintain the allowed hours of operation as permitted by code of 6:00 a.m. to 11:00 p.m. A Condition of Approval has been added to ensure compliance with this.

- b. ***The Waiver will not cause a detrimental effect on the overall design and development standards of the project, and will be in harmony with the general site layout and design details of the development; and,***

YES: The request to allow 24-hour operation will not be detrimental to the overall design and development standards of the project. The requested deviation from the standard hours of operation of 6:00 a.m. to 11:00 p.m. has no impact on the proposed physical design and development standards of the project and it only applies to the Hotel use. The type of use, being a Hotel requires 24 hour operation in accordance with the business model of the use. The design of the project with the Building being located along Congress Avenue, and the location of the parking spaces to the east along with perimeter landscaping and a retention pond to the southeast will act as a buffer for the residential uses to the east, and will mitigate possible effects if the Type 2 Waiver is approved to allow 24-hour operation.

- c. ***The alternative design option recommended as part of the Waiver approval, if granted, will not adversely impact adjacent properties.***

YES: No alternative design option was proposed or recommended. The current configuration of the proposed development has been assessed by Staff to minimize adverse impact to the adjacent residential properties. The proposed building is located approximately 130 feet from the nearest residential property to the east, with parking spaces, drainage and a 20 foot buffer separating the uses. If this Waiver is granted, the operation of the Hotel use will not adversely impact the residential uses to the east.

CONCLUSION: Staff has evaluated the standards listed under Article 2.B.7.C.2, Article 2.B.7.D.3 and Article 2.B.7.E.6, Article 2.B.7.F.6., and determined that there is balance between the need for change and the potential impacts generated by the Posh Hospitality No. 3 development for the three Type 2 Variances, the Development Order Abandonment, the Development Order Amendment and a Type 2 Waiver. Therefore, Staff is recommending approval of the request, subject to the Conditions of Approval as indicated in Exhibits C-1, through C-3.

CONDITIONS OF APPROVAL

EXHIBIT C-1

Type 2 Variance – Concurrent

ALL PETITIONS

1. The approved Preliminary Site Plan is dated June 20, 2023. Modifications to the Development Order inconsistent with the Conditions of Approval, or changes to the uses or site design beyond the authority of the Development Review Officer as established in the Unified Land Development Code, must be approved by the Zoning Commission.

VARIANCE

1. The Development Order for this Concurrent Variance, for the reduction in setbacks, shall be tied to the Time Limitations of the Development Order for SV/ZV/ABN/DOA/W-2022-01312. The Property Owner shall secure a Building Permit or Commencement of Development to vest this Variance. (ONGOING/BLDG PERMIT: MONITORING - Zoning)

2. The Development Order for this Concurrent Variance, for the reduction in lot size, shall be tied to the Time Limitations of the Development Order for SV/ZV/ABN/DOA/W-2022-01312. The Property Owner shall secure a Plat approval to vest this Variance. (ONGOING/PLAT: MONITORING - Zoning).

3. At time of application for a Building Permit, the Property Owner shall provide a copy of this Variance approval along with copies of the approved Plan to the Building Division. (BLDG/PMT/ONGOING: BUILDING DIVISION - Zoning)

COMPLIANCE

1. In Granting this Approval, the Zoning Commission relied upon the oral and written representations of the Property Owner/Applicant 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 Zoning Commission 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; the 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 Unified Land Development Code 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 of Approval; 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 Official Zoning Map Amendment, Conditional Use, Requested Use, 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. (ONGOING: MONITORING - Zoning)

DISCLOSURE

1. All applicable state or federal permits shall be obtained before commencement of the development authorized by this Development Permit.

CONDITIONS OF APPROVAL

Exhibit C-2

Development Order Amendment

ALL PETITIONS

1. Development of the site is limited to the site design approved by the Board of County Commissioners. The approved Preliminary Site Plan is dated June 20, 2023. All modifications to the Development Order must be approved by the Board of County Commissioners or Zoning Commission, unless the proposed changes are required to meet Conditions of Approval. (ONGOING: ZONING - Zoning)

ENGINEERING

1. No Building Permits for the site may be issued after December 31, 2027, or as amended. 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 Art. 2.E of the Unified Land Development Code. (DATE: MONITORING - Engineering)

ENVIRONMENTAL

1. Prior to Final Approval by the Development Review Officer, a Phase II Environmental Site Assessment shall be submitted to the Department of Environmental Resources Management (ERM). If the results of the Phase II Environmental Site Assessment indicate areas of on-site contamination, the project shall be referred to the Florida Department of Environmental Protection (FDEP) for the development of a mitigation plan and to oversee the remediation on the site. (DRO: ENVIRONMENTAL RESOURCES MANAGEMENT - Environmental Resources Management)

LANDSCAPE - PERIMETER

1. PERIMETER LANDSCAPING ALONG THE EASTERN PROPERTY LINES (ABUTTING RESIDENTIAL)
Prior to Development Review Officer (DRO) approval, landscaping along the eastern property line shall include a six (6) foot high opaque wall. The wall may be constructed on the property line. Height of the wall shall be measured from the highest grade of the two adjoining properties or from the nearest adjacent finished floor of the proposed structure. Method of measuring height of the wall shall be finalized subject to the review and approval by the Landscape Section to ensure screening effect is achieved for the adjacent properties. (DRO/ONGOING: ZONING - Zoning)

2. Pines shall be installed for each thirty (30) linear feet of the eastern property line abutting residential. (BLDGPM: ZONING - Zoning)

PLANNING

1. Per SCA-2006-30, Ord. 2007-21 condition 1: The 0.16 acre parcel (Subject of SCA 2006-00030) shall only be used for landscaping, drainage, and parking purposes (a parking structure would be allowed (ONGOING: PLANNING - Planning)

SIGNS

1. Prior to Final Development Review Officer (DRO) approval, the Applicant shall modify the Master Sign Plan to remove the abandoned Oklahoma Street and extend the property line. All information related to proposed signage along Oklahoma Street shall also be removed. (DRO: ZONING - Zoning)

2. Prior to Final Development Review Officer (DRO) approval, the Applicant shall be modify the Preliminary Master Sign Plan to remove the wall sign along the eastern façade of the building. (DRO: ZONING - Zoning)

SITE DESIGN

1. Prior to Final Development Review Officer (DRO) approval, the Applicant shall modify the Site Plan to reflect the parking reduction request in a Type 1 Waiver table. (DRO: ZONING - Zoning)

2. Prior to Final Development Review Officer (DRO) approval, the Applicant shall modify the Site Plan to provide an additional loading space or request a reduction in the required number of loading spaces through the Type 1 Waiver process. (DRO: ZONING - Zoning)

SP - BILLBOARD DEMO

1. Within 60 days of approval by the Board of County Commissioners, a Special Permit and concurrent Demolition Permit shall be submitted for the demolition of the existing Billboard. (ONGOING: ZONING - Zoning)

COMPLIANCE

1. In Granting this Approval, the Board of County Commissioners relied upon the oral and written representations of the Property Owner/Applicant 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: ZONING - Monitoring)

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; the 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 Unified Land Development Code 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 of Approval; 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 Official Zoning Map Amendment, Conditional Use, Requested Use, 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. (ONGOING: ZONING - Monitoring)

DISCLOSURE

1. All applicable state or federal permits shall be obtained before commencement of the development authorized by this Development Permit.

CONDITIONS OF APPROVAL

Exhibit C-3

Type 2 Waiver

ALL PETITIONS

1. The approved Preliminary Site Plan is dated June 20, 2023. Modifications to the Development Order inconsistent with the Conditions of Approval, or changes to the uses or site design beyond the authority of the Development Review Officer as established in the Unified Land Development Code, must be approved by the Board of County Commissioners or the Zoning Commission. (ONGOING: ZONING - Zoning)

USE LIMITATIONS

1. Accessory services and facilities, such as food and beverage, recreational, meeting, or conference rooms, ballrooms, and delivery shall be limited to the hours of operation of 6:00 a.m. to 11:00 p.m. (ONGOING: CODE ENF - Zoning)

COMPLIANCE

1. In Granting this Approval, the Board of County Commissioners relied upon the oral and written representations of the Property Owner/Applicant 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; the 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 Unified Land Development Code 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 of Approval; 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 Official Zoning Map Amendment, Conditional Use, Requested Use, 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. (ONGOING: MONITORING - Zoning)

DISCLOSURE

1. All applicable state or federal permits shall be obtained before commencement of the development authorized by this Development Permit.

Figure 1 - Land Use Map



Figure 2 – Zoning Map

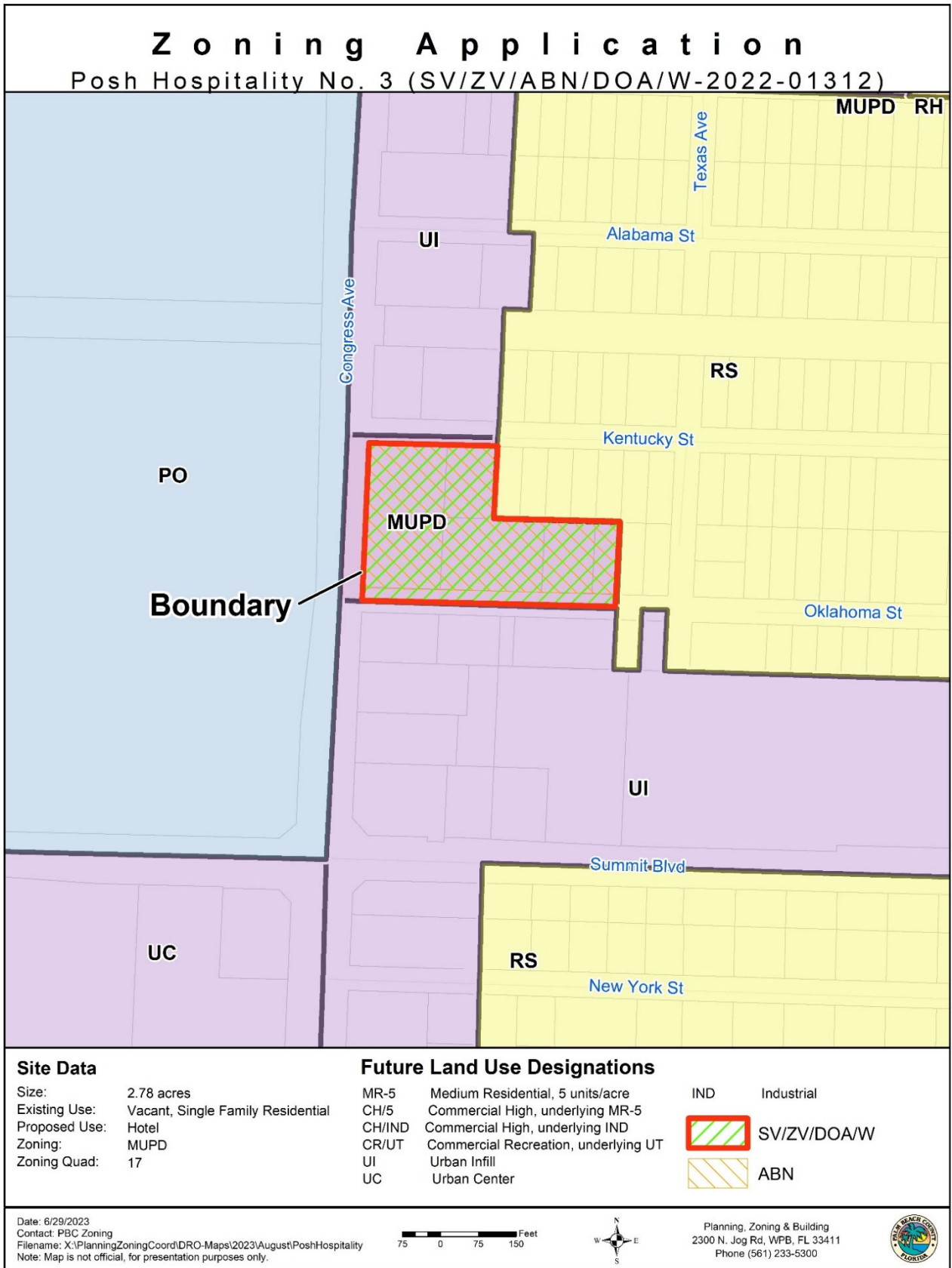


Figure 3 – Preliminary Site Plan dated June 20, 2023

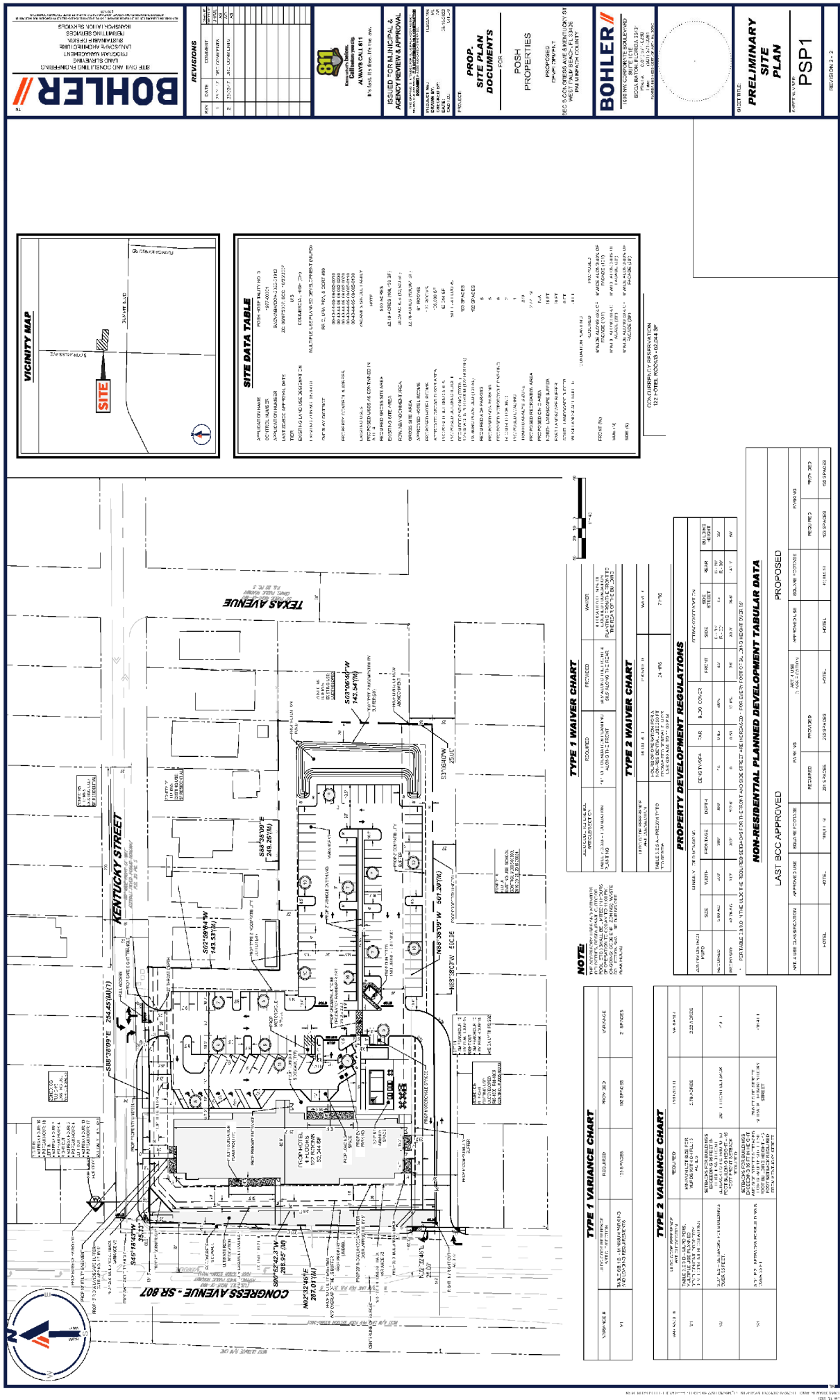


Figure 4 – Preliminary Regulating Plan dated May 22, 2023 (Page 1 of 2)

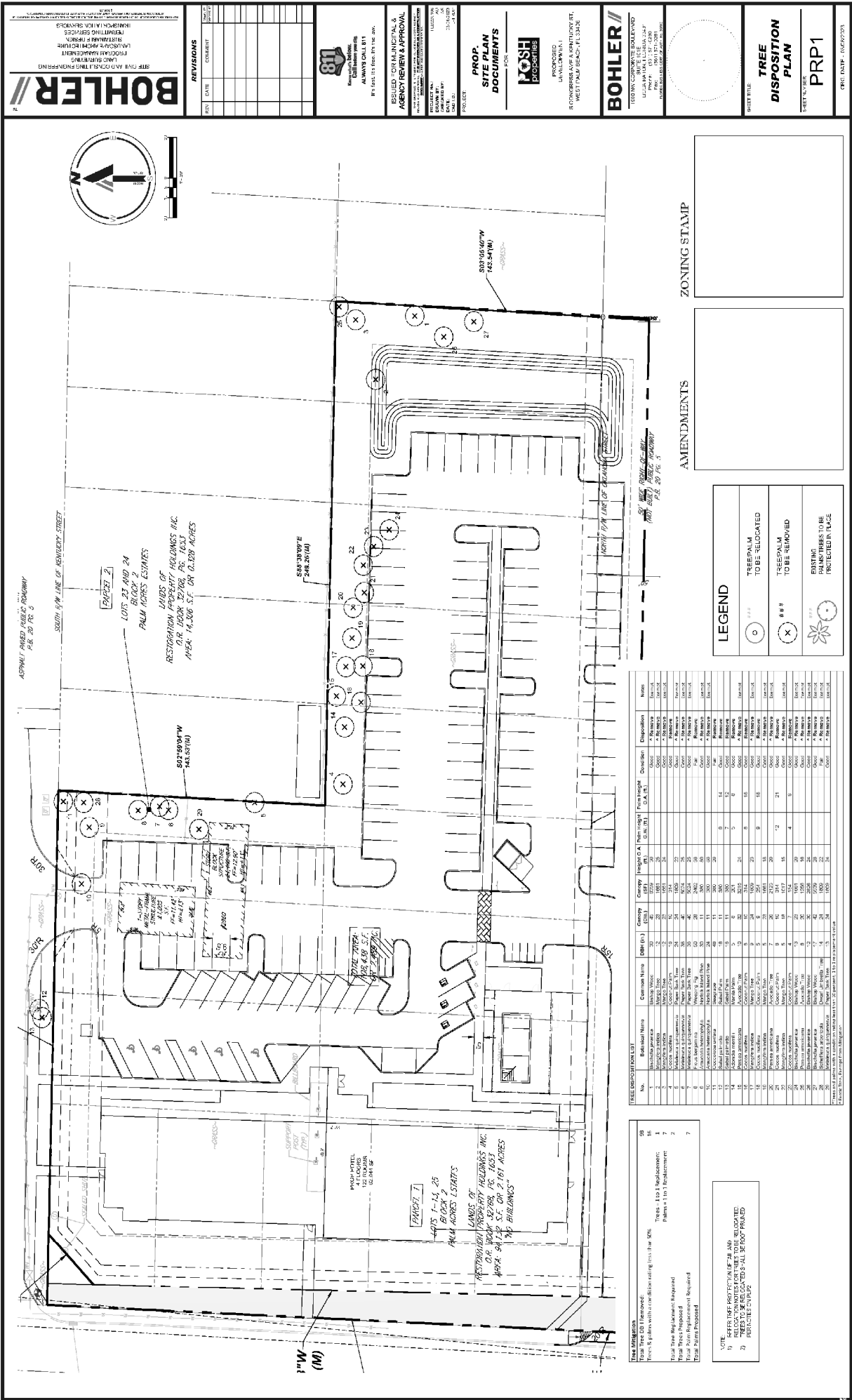
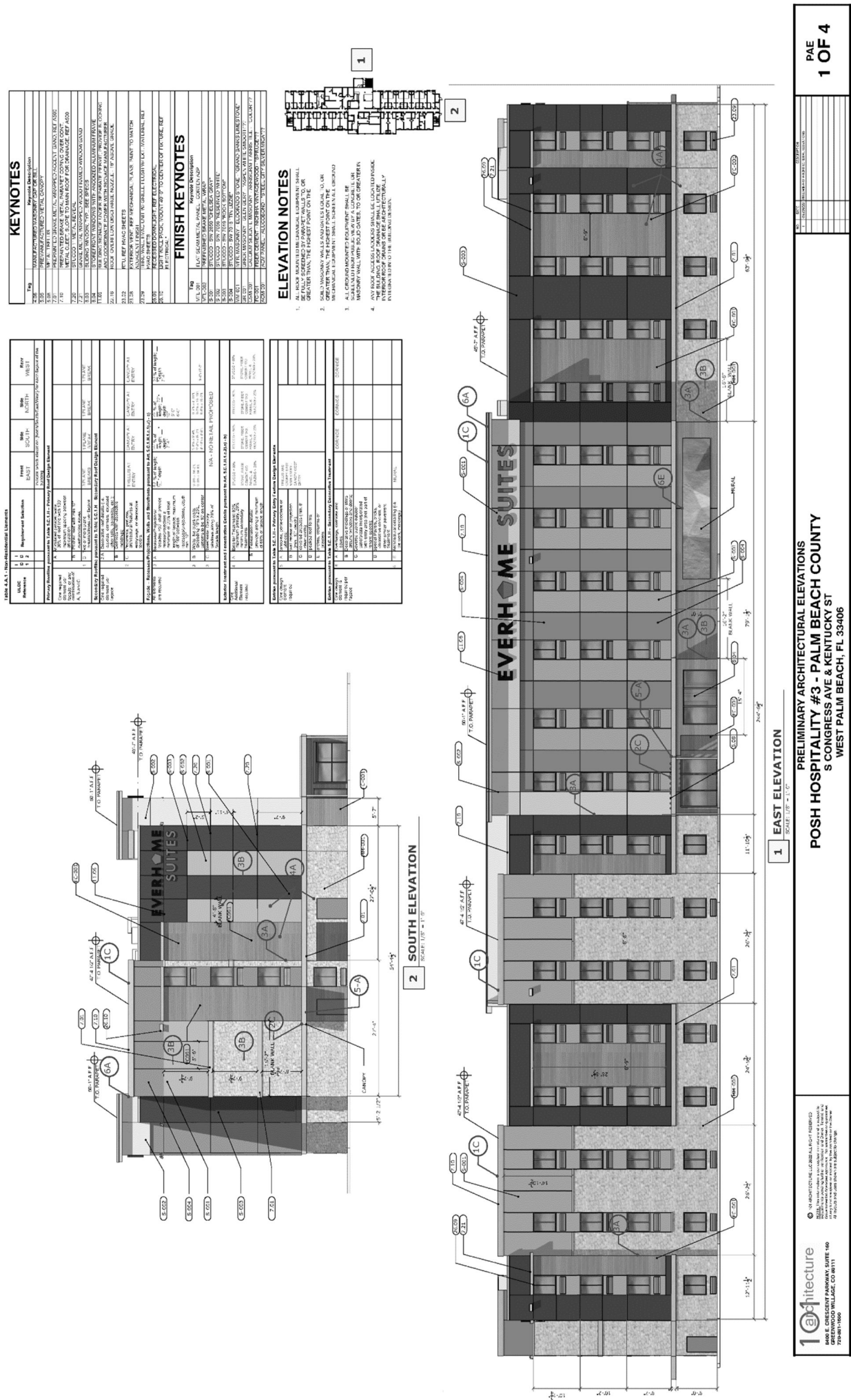


Figure 5 – Preliminary Architectural Elevations dated May 22, 2023 (Page 1)



Zoning Commission
SV/ZV/ABN/DOAW-2022-01312

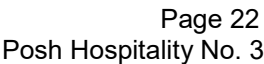


Figure 6 – Preliminary Master Sign Plan dated May 22, 2023 (Page 1 of 3)

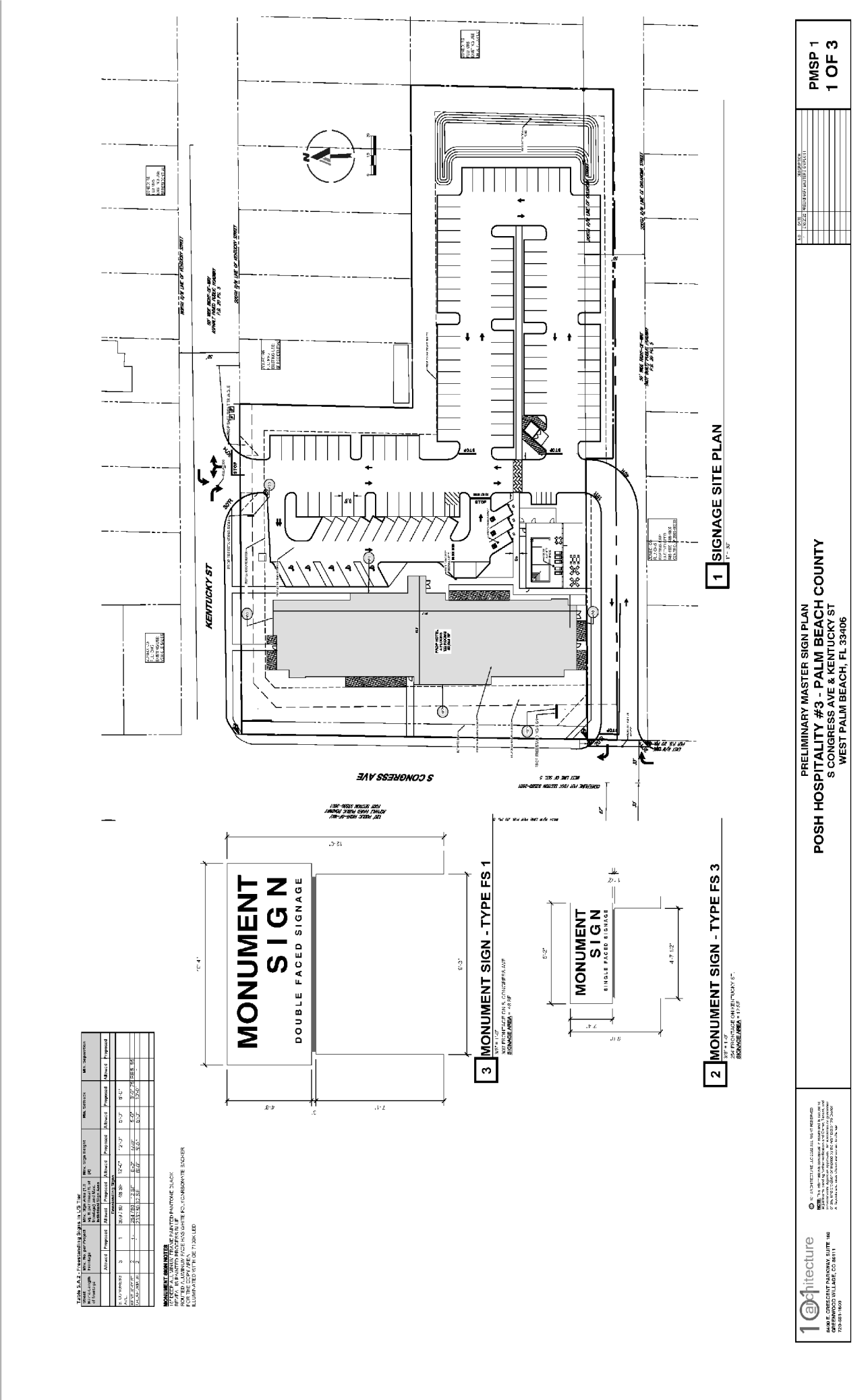


Figure 6 – Preliminary Master Sign Plan dated August 17, 2022 (Page 2 of 3)

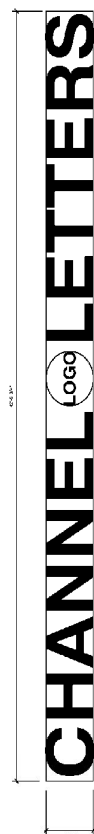
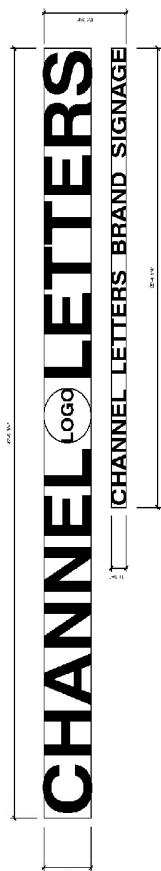
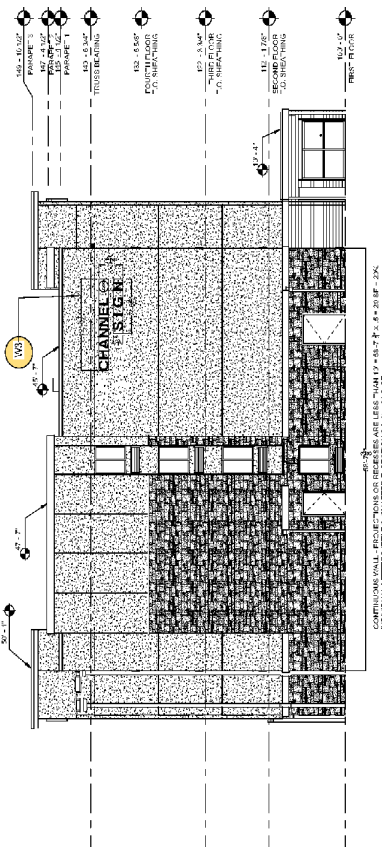
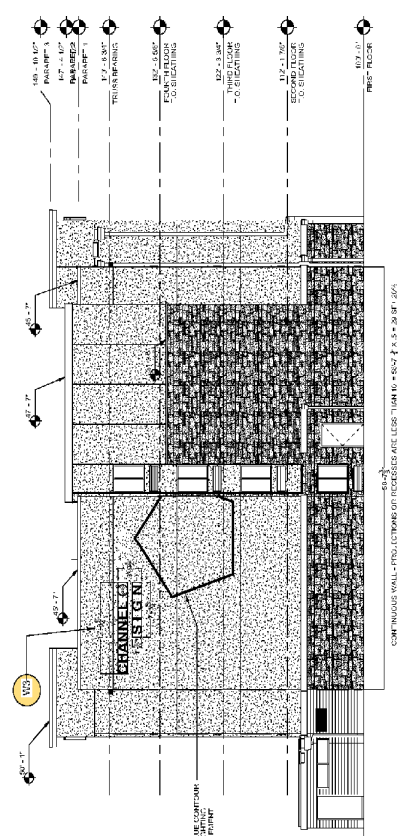
[illegible]

Figure 6 – Preliminary Master Sign Plan dated August 17, 2022 (Page 3 of 3)

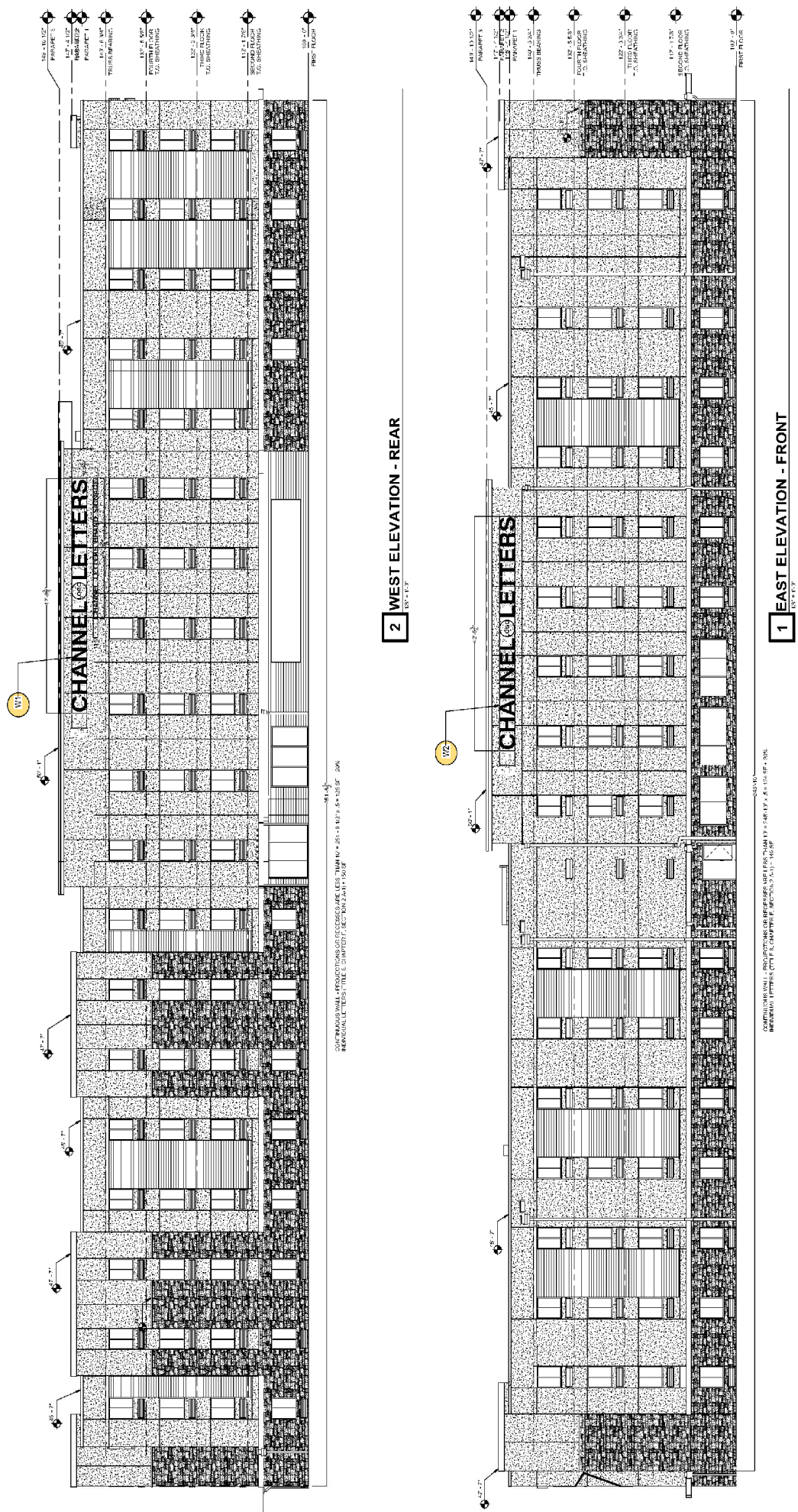


Exhibit D – Disclosure of Ownership



[TO BE COMPLETED AND EXECUTED ONLY WHEN THE APPLICANT IS NOT THE OWNER OF THE SUBJECT PROPERTY]

STATE OF FLORIDA
COUNTY OF PALM BEACH

1. Affiant is the [] individual or [x] Manager [position—e.g., *president, partner, trustee*] of Posh Hospitality No. 3, Congress Avenue LLC [name and type of entity - e.g., *ABC Corporation, XYZ Limited Partnership*], (hereinafter, "Applicant"). Applicant seeks Comprehensive Plan amendment or Development Order approval for real property legally described on the attached Exhibit "A" (the "Property").

2. Affiant's address is: 501 SE 2nd St 703
Fort Lauderdale, FL 33301

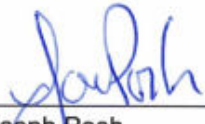
3. Attached hereto as Exhibit "B" is a complete listing of the names and addresses of every person or entity having a five percent or greater interest in the Applicant. Disclosure does not apply to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

4. Affiant acknowledges that this Affidavit is given to comply with Palm Beach County policy, and will be relied upon by Palm Beach County in its review of Applicant's application for Comprehensive Plan amendment or Development Order approval. Affiant further acknowledges that he or she is authorized to execute this Disclosure of Ownership Interests on behalf of the Applicant.

5. Affiant further acknowledges that he or she shall by affidavit amend this disclosure to reflect any changes to ownership interests in the Applicant that may occur before the date of final public hearing on the application for Comprehensive Plan amendment or Development Order approval.

6. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

7. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct, and complete.



Joseph Posh, Affiant
(Print Affiant Name)

NOTARY PUBLIC INFORMATION:

Commonwealth of Pennsylvania
~~STATE OF FLORIDA~~
~~COUNTY OF PALM BEACH~~ *Northampton*

The foregoing instrument was acknowledged before me by means of ☒ physical presence or
[] online notarization, this 16th day of August, 2022 by
Joseph Posh (name of person acknowledging). ☒ He/she ☒ is personally
☒ known to me or has produced _____ (type of identification) as
identification and did ☒ did not take an oath (circle correct response).

Tara M. Szy
(Name - type, stamp or print clearly)

Tara M. Szy
(Signature)

My Commission Expires on: 11-17-25

NOTARY'S SEAL OR STAMP

Commonwealth of Pennsylvania - Notary Seal
Tara M. Szy, Notary Public
Northampton County
My commission expires November 17, 2025
Commission number 1164267
Member, Pennsylvania Association of Notaries

EXHIBIT "A"

PROPERTY

PROPERTY 1:

PARCEL 1:

LOTS 1 THROUGH 13 AND 25, BLOCK 2, PALM ACRES ESTATES, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 20, PAGE 5, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

PARCEL 2:

LOTS 23 AND 24, BLOCK 2, PALM ACRES ESTATES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 20, PAGE 5, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

PARCEL 3: (NOT INCLUDED IN SURVEY)

LOT 11, BLOCK 1, PALM ACRES ESTATES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 20, PAGE 5, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

PARCEL 4: (NOT INCLUDED IN SURVEY)

LOTS 1, 2, 3, AND 4, BLOCK 10, PALM ACRES ESTATES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 20, PAGE 5, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

EXHIBIT "B"

DISCLOSURE OF OWNERSHIP INTERESTS IN APPLICANT

Affiant must identify all entities and individuals owning five percent or more ownership interest in Applicant's corporation, partnership or other principal, if any. Affiant must identify individual owners. For example, if Affiant is the officer of a corporation or partnership that is wholly or partially owned by another entity, such as a corporation, Affiant must identify the other entity, its address, and the individual owners of the other entity. Disclosure does not apply to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

Name	Address
Thomas Truske	501 SE 2nd St, Apt. 703, Fort Lauderdale, FL 33301 47.5%
Joseph Posh	2216 Willow Park Road, Bethlehem, PA 18020 47.5%
Jason Posh	2216 Willow Park Road, Bethlehem, PA 18020 5%



1900 NW Corporate Blvd, Suite 101E
Boca Raton, FL 33431
561.571.0280

Feb 16th, 2023

Palm Beach County Planning Division
2300 N. Jog Rd, 2nd floor
West Palm Beach, FL 33411

RE: Drainage Statement

**SEC S Congress Ave & Kentucky St
West Palm Beach, FL
Bohler PN: FLB220106**

To whom it may concern,

The proposed project lies within unincorporated Palm Beach County at the SEC of S Congress Ave & Kentucky St, West Palm Beach, FL 33406. The overall site is approximately 2.75 Ac. The project scope includes the construction of a 4-story hotel.

The site is currently vacant besides a billboard and an abandoned structure. Kentucky St borders the property on the north, Single-family residential to the east, vacant property to the south, and S Congress Ave to the west. The site is generally graded sloping from west to east and there is no apparent outfall. There is no existing stormwater infrastructure on-site and there is no existing environmental resource permit. There are inlets along S Congress Avenue that may be used for drainage off-site.

The proposed site plan calls for the construction of the hotel on the west side of the site along S Congress Ave. Associated parking and site amenities shall be constructed on the interior of the site. Access is proposed from Kentucky St and S Congress Ave. A dry detention pond shall be constructed along the east side of the site. Additional exfiltration trench may be proposed to meet SFWMD's water quality and quantity requirements. The design storms are the 10 yr – 3 day, the 25 yr – 3 day, and the 100 yr – 3 day. Runoff shall be directed offsite via a pipe connection to one of the existing stormwater structures along S Congress Ave. The site does reside in the C-51 sub-basin and shall conform to the additional storage compensation requirements set forth in the SFWMD applicant handbook. The site will be graded and designed to prevent any negative impacts to existing surface water flows from adjacent properties. Best Management Practices will be applied wherever feasible.


Should there be any questions or should additional information required, please feel free to contact us at (561) 571-0280 or via email: ASavage@bohlereng.com.

Sincerely,
BOHLER ENGINEERING

Andrew Savage, P.E.
Project Manager

www.BohlerEngineering.com

Exhibit G – Justification Statement



DUNAY
MISKEL
BACKMAN

LLP

Gary Dunay

Bonnie Miskel

Scott Backman

Eric Coffman

Hope Calhoun

Dwayne Dickerson

Ele Zachariades

Matthew H. Scott

Christina Bilenki

Lauren G. Odom

Nicole Jaeger

Rachael Bond Palmer

Posh Hospitality No. 3
Justification Statement for Development Order Amendment to PDD-MUPD,
Development Order Abandonment of Requested Use for Hotel,
Type 2 Variances for Lot Area and Setback Reduction (Front and Side Street),
Type 1 Variance Parking Reduction, and
Type 1 Waivers for Reduction in Loading Spaces and Reduction in Foundation Planting
Submitted: August 17, 2022
Resubmitted: September 21, 2022
Resubmitted: October 19, 2022
Resubmitted: December 28, 2022
Resubmitted: January 23, 2023
Resubmitted: May 22, 2023
Resubmitted: June 15, 2023

Posh Hospitality No. 3, Congress Avenue LLC, ("Petitioner") is under contract to purchase a +/- 2.49 acre aggregation of five (5) parcels located at 530 S Congress Avenue, 2960 Kentucky Street, and 2905, 2921, and 2965 Oklahoma Street ("Property") owned by Restoration Property Holdings Inc. ("Owner"), which is generally located on the east side of South Congress Avenue between Kentucky Street and Oklahoma Street in unincorporated Palm Beach County ("County"). Petitioner proposes to abandon the adjacent Oklahoma Street right-of-way to the south of the Property, thus bringing the property area to +/- 2.78 gross acres.

The Property is referenced by the following Parcel Control Numbers ("PCNs"): 00-43-44-05-08-002-0010, 00-43-44-05-08-002-0070, 00-43-44-05-08-002-0110, 00-43-44-05-08-002-0130, 00-43-44-05-08-002-0230. The Property is designated CH/5 (Commercial High, with and underlying MR-5) on the County's Future Land Use Map ("FLUM") and is located within the MUPD, Multiple Use Planned Development, zoning district. The Property is located within the Urban Redevelopment Area-Priority Redevelopment Area ("URA-PRA") and Revitalization and Redevelopment Overlay ("RRO") of the County. The Property was previously approved for a 10 story, 81 room, 108,000 square foot Hotel subject to thirteen (13) approved variances. The original concept is no longer viable, and Petitioner respectfully requests approval for a 4-story, 122-room hotel, in order to serve the County's growing demand for lodging and provide catalyst for beneficial redevelopment and infill in this area.

PROJECT HISTORY

There have been several Planning and Zoning approvals for the Property as follows:

Prior Approvals			
Approval No.	Date	Request	Decision
R-1976-0490	6/8/1976	Rezoning from CN and RS to CG	Approved
R-1977-0338	4/5/1977	Special exception to allow automobile rental facility	Approved
R-1988-0140	2/2/1988	Revocation of special exception to allow automobile rental facility	Approved

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Ord. 2002-087	12/18/2002	FLUM Amendment from the C/5 FLUM Designation to the CH/5 FLUM Designation	Approved
Ord. 2007-021	10/25/2007	FLUM Amendment for 0.16 Acre Property from MR/5 FLUM Designation to CH/5 FLUM Designation	Approved
ZR-2007-036	6/7/2007	Type 2 Variance to allow and elimination of the frontage requirement along an arterial or collector street for a CH-MUPD, a reduction in lot size, a reduction in lot width, an increase in FAR, an increase in Building Coverage, a reduction in front setback, a reduction in side street setbacks, an elimination of the hours of operations limit, and an elimination of right-of-way buffers	Approved
R-2007-1883	10/25/2007	Rezoning from CN, RS, and CG to MUPD	Approved
R-2007-1884	10/25/2007	Special exception to allow Hotel Use within newly formed MUPD	Approved

As noted above, the Zoning Commission previously approved Resolution ZR-2007-036 to allow the following Type 2 Variances:

Application No.	Code Section	Required	Proposed	Variance
ZV-2007-00016	3.E.1.C.2.a.2 PDDs shall have legal access on an arterial or collector street	PDDs shall have legal access on an arterial or collector street	Access on non-arterial, non-collector street	Access on non-arterial, non-collector street
	3.E.3 – MUPD, Multiple Use Planned Development. Property Development Regulations.	Minimum lot size for MUPDs with CH FLU: 5 acres	2.48 acres	-2.52 acres
	3.E.3 MUPD, Multiple Use Planned Development. Property Development Regulations.	Setbacks for buildings exceeding 35 feet in height and front setback for CH-MUPD: 147 feet for 152 foot bldg.	27 feet	-120 feet
	3.E.3 MUPD, Multiple Use Planned Development. Property Development Regulations	Setbacks for buildings exceeding 35 feet in height and side setback for CH-MUPD: 55 feet for 60 foot garage to	23 feet	-32 feet

		N. property line (p 57)		
	3.E.3 MUPD, Multiple Use Planned Development. Property Development Regulations.	Setbacks for buildings exceeding 35 feet in height and side- street setback for CH-MUPD: 55 feet for 60 foot garage to Oklahoma Street (S. property line)	5 feet	-50 feet
	3.E.3 MUPD, Multiple Use Planned Development. Property Development Regulations.	Setbacks for buildings exceeding 35 feet in height and side- street setback for CH-MUPD: 147 feet for 152 foot hotel to Oklahoma Street	45 feet	-102 feet
	3.E.3 MUPD, Multiple Use Planned Development. Property Development Regulations.	Setbacks for buildings exceeding 35 feet in height and side- street setback for CH-MUPD: 147 feet for 152 foot hotel to Kentucky	48 feet	-99 feet
	3.E.3 – MUPD Multiple Use Planned Development. Property Development Regulations.	Minimum lot width and frontage for MUPDs with CH FLU: 300 feet.	287 feet	-13 feet
	3.E.3 MUPD, Multiple Use Planned Development. Property Development Regulations.	Maximum building coverage for MUPDs with CH FLU: 30%.	43%	-13%
	3.D.3.A.2.a Property Development Regulations	Hours of operation for commercial	24 hours	-7 hours

	(PDRs), District Specific Regulations, IL & IG Districts	adjacent to residential 6:00 a.m. 11:00 p.m.		
	7.C Landscaping, minimum tier requirements	Foundation planting, side façade (Parking structure along Oklahoma Street): 8 feet	0 feet	-8 feet
	7.F Landscaping Perimeter Buffer Landscape Requirements, R-O-W Buffer	Width of R-O-W Buffer – R-O-W width over 100 feet – Congress Avenue: 20 feet	0 feet	-20 feet
	7.F Landscaping Perimeter Buffer Landscape Requirements, R-O-W Buffer	Width R-O-W Buffer – R-O-W Width under 100 feet – Oklahoma Street: 15 feet	0 feet	-15 feet

While a number of variances are needed to allow for development of the Property, several of the previously approved variances have been eliminated and, in all cases where a variance continues to be required, the variance request is less than previously approved.

SURROUNDING CONTEXT

The Property is located in a mixed-use context with commercial uses to the north and west, vacant land to the south, and residential to the east. The property located across Congress Avenue to the west is designated CR/UT (Commercial Recreation, with and underlying UT) on the County's FLUM, located within the PO, Public Ownership zoning district, and developed as the Trump International Golf Club West Palm Beach. The property located across Oklahoma Street to the south is designated UI (Urban Infill) on the County's FLUM, located within the UI, Urban Infill zoning district, and is currently vacant, undeveloped land owned by the owner of the gas station located farther south. The property located across Kentucky Street to the north is designated UI (Urban Infill) on the County's FLUM, located within the UI, Urban Infill zoning district, and developed for commercial use. Additionally, properties located to the north of the Property across Kentucky Street and properties adjacent to the Property to the east are designated MR-5 (Medium-residential, 5 units per acre) on the County's FLUM, located within the RS, Single Family Residential zoning district, and are developed as single family homes.

APPLICATION REQUEST

The previously approved 10-story hotel is no longer a feasible development for the Property. As such, Petitioner proposes to develop the Property with a +/- 62,044 square foot 4-story, 122-room Hotel ("Project"). In order to develop the Project, Petitioner respectfully requests approval for:

- **Development Order Amendment to Resolution No. R-2007-1883 for a Zoning Map Amendment to a Multiple Use, Planned Development District to reconfigure the site plan to add land area through the abandonment of a portion of Oklahoma Street and to allow a 4-story, 122 room, 62,044 square foot Hotel in lieu of the previously approved 10-story, 81 room, 108,000 square foot Hotel (“DOA”);**
- **Abandonment of Resolution R-2007-1884, which allowed a Requested Use for Hotel in the Multiple Use Planned Development Zoning District (“Abandonment”);**
- **Type 2 Variances as follows:**

Proposed Type 2 Variance Chart				
	Code Section	Required	Proposed	Variance
V1	Table 3.E.3.D – MUPD PDRs, Multiple Use Planned Development. Property Development Regulations.	Minimum lot size for MUPDs with CH FLU: 5 acres	2.78 acres	-2.22 acres
V2	3.D.1.E.2 – Setbacks for buildings over 35 feet.	Setbacks for buildings exceeding 35 feet in height and front setback for CH-MUPD: 50 foot building height – 45 foot front setback required	26-foot front setback	-19 feet
V3	3.D.1.E.2 – Setbacks for buildings over 35 feet.	Setbacks for buildings exceeding 35 feet in height and side-street setback for CH-MUPD: Street 50 foot building height – 45 foot setback required from Kentucky Street.	26.6 feet	-18.4 feet

- **Type 2 Waiver as follows:**

Proposed Type 2 Waiver Chart				
W1	Table 5.E.5.A – Hours of Operations (Commercial)	Hours of operation for commercial adjacent to residential 6:00 a.m. to 11:00 p.m.	24 hours	-7 hours

- **Type 1 Variance from Table 6.B.1.B. - Minimum Parking and Loading Requirements to provide 132 Parking Spaces in lieu of the 153 Parking Spaces required, a reduction of 21 spaces (+/- 13.75% reduction); and**
- **Type 1 Waiver from ULDC Section 6.E.2.B to provide one (1) loading space in lieu of the two (2) loading spaces required;**

- **Type 1 Waiver from ULDC Table 7.C.3.B to allow relocation of 50% of the required foundation planting from the front of the building to the rear of the building; and**
- **A Land Development Design Standard Waiver from Section 300(4)(b), to provide a throat distance of 25 feet on Kentucky Street.**

As detailed herein, the Project is consistent and compliant with all applicable regulations and approval criteria for the requests detailed above.

DOA STANDARDS

Pursuant to ULDC Section 2.B.7.B.2, Petitioner will demonstrate that the DOA: (a) is consistent with the County's Comprehensive Plan; (b) is consistent with the County's ULDC; (c) is compatible with surrounding uses; (d) is designed to minimize environmental impacts; (e) will result in a logical, orderly and timely development pattern; (f) is compliant with the County's concurrency standards; and (g) is necessitated by changed conditions.

1. ***Consistency with the Plan*** – Approval of the DOA is consistent with the purposes, goals, objectives, and policies of the Plan, including standards for building and structural intensities and densities, and intensities of use. As noted above, the Property is designated CH/5, Commercial High with an underlying MR-5, on the County's FLUA. The Project proposes to provide much needed infill development within the URA-PRA and RRO within the County. The Project is designed to provide a transition from the highly travelled and intense Congress Avenue right-of-way to the existing residential uses to the east with the higher intensity hotel use located along Congress Avenue and passive drainage areas and incompatibility buffer located to the east to ensure an appropriate transition. In accordance with the CH FLU designation, the Project will serve community and regional commercial demand for individuals and businesses in need of lodging within this area.

The Project complies with the Comprehensive Plan Policies of Objective 1.2.2, Urban Redevelopment Area. Specifically, the Project is consistent with the purpose of the URA as it is an infill redevelopment project that promotes economic growth, creates investment and reinvestment in the area, and discourages urban sprawl by directing development where resources exist. In accordance with Policy 1.2.2-a, the Project furthers the intent of the URA by preserving and respecting the existing neighborhood to the east and maintaining the character and quality of life for those within the neighborhood by focusing development to the west of the Property and providing suffering and retention to transition to the residential uses. Further, the Property's location immediately south of the Palm Beach International Airport provides opportunity for reduction in automobile trips for those traveling to the County by providing a new lodging option in close proximity to the airport.

Approval of the DOA is not only consistent with the existing FLU designation of the Property, but also with Policy 2.2.c of the PBC Comprehensive Plan, which requires the PBC Code to be consistent with appropriate elements of the PBC Comprehensive Plan including compatibility with adjacent future land uses. The DOA is consistent with Policy 1.2-b of the Plan, which requires that the County encourage and support sustainable urban development, including infill redevelopment. The proposed DOA will allow for the unified infill redevelopment of the Property to provide the goods and services required by the surrounding community, consistent with Policy 1.2-b. In addition, the Project complies with the maximum 0.85 FAR provided in TABLE 2.2-e.1 of the Future Land Use Element. Lastly, the Project complies with the Condition of Ordinance 2007-021 with the provision of

landscaping and drainage on the 0.16 acre parcel located at the southeast corner of the Property. Considering the foregoing, the DOA is consistent with the County's Plan.

- 2. Consistency with the Code** - The DOA complies with the applicable standards and provisions of the County ULDC for use, layout, function, and general development characteristics. The following analysis details the DOA's compliance with the County's ULDC.

Article 1: The Project complies with Article 1 as there are no prior public hearing approvals and Petitioner is not seeking to vest any existing nonconformities.

Article 2: The Project complies with the Development Review procedures outlined in Article 2 through the processing of this application.

Article 3: The Project is subject to the provisions of ULDC Section 3.B.16, Urban Redevelopment Area Overlay, and ULDC Section 3.E, Planned Development Districts, as applicable.

Compliance with ULDC Section 3.B.16, Urban Redevelopment Area Overlay

The Property abuts public rights-of-way to the north, south, and west, and residential properties to the east. As such, the Interconnectivity Standards of ULDC Section 3.B.16.B.1 and ULDC Section 3.B.16.F.5 do not apply. Further, the Property is not designated UC or UI on the County's Future Land Use ("FLU") Map. As such, the URAD requirements of 3.B.16 do not apply to the Property pursuant to ULDC Section 3.B.16.B.2, which requires compliance with the requirements of ULDC Section 3.B.16 for parcels with a UC or UI FLU designation.

Compliance with ULDC Section 3.E, Planned Development Districts

ULDC Section 3.E.1.A: The Project is consistent with the purpose of the MUPD zoning district to provide opportunities for enlightened and imaginative approaches to community planning and site design by: allowing flexibility from standard property development regulations; applying property development regulations to the entire project rather than individual lots, such as: access, parking, lot dimensions, lot frontage, and landscaping; and encouraging the creation of a unified image between buildings and signage through architecture. The proposed MUPD district is also consistent with the CH/5 FLU designation.

Article 3.E.1.C.1 – Design Objectives for a PDD

The development proposal meets **Article 3.E.1.C.1 – Design Objectives** for a PDD as follows:

- a. *Contain sufficient depth, width, and frontage on a public street, or appropriate access thereto, as shown on the PBC Thoroughfare Identification Map to adequately accommodate the proposed use and design.*

The proposed development is consistent with this PDD Design Objective. The MUPD proposes frontage on South Congress Avenue, which is included in the County's Thoroughfare Identification Map, and adequately accommodates the proposed use and design.

- b. *Provide a continuous, non-vehicular circulation system which connects uses, public entrances to buildings, recreation areas, amenities, usable open space, and other land improvements within and adjacent to the PDD.*

The Project is designed to provide for connection of the use and usable open space areas/plaza spaces by a continuous non-vehicular circulation system within and adjacent to the Project.

- c. *Provide pathways and convenient parking areas designed to encourage pedestrian circulation between uses.*

The Project is designed to provide convenient parking and pedestrian connections to promote pedestrian circulation throughout the Property.

- d. *Preserve existing native vegetation and other natural/historic features to the greatest possible extent.*

The Property is currently vacant. Please refer to the Tree Disposition Plan included with this application as PRP-1, which provides the disposition of all existing native vegetation.

- e. *Screen objectionable features (e.g., mechanical equipment, loading/delivery areas, storage areas, dumpsters, compactors) from public view and control objectionable sound.*

The Project is designed to provide appropriate screening in those cases where mechanical equipment, loading, and dumpsters exist.

- f. *Locate and design buildings, structures, uses, pathways, access, landscaping, water management tracts, drainage systems, signs and other primary elements to minimize the potential for any adverse impact on adjacent properties.*

Buildings, structures, pathways, access, landscaping, drainage systems, and signs have been designed to minimize the potential for any adverse impact on adjacent properties. The plan submitted herein was developed after a detailed assessment of the surrounding built community and a determination where new development could be constructed with minimal impact on adjacent properties.

- g. *Creation of a strong pedestrian system through the design and placement of buildings connected to a common public space or usable open spaces;*

The Project is designed to create a strong pedestrian system through the design and placement of buildings connected to the common public open space.

- h. *For PDD only, a minimum of one pedestrian amenity for each 100,000 square feet of GFA or fraction thereof shall be incorporated into the overall development to create a pedestrian friendly atmosphere. Suggested amenities include, but are not limited to:*

- 1) *public art;*
- 2) *clock tower;*
- 3) *water feature/fountain;*

- 4) *outdoor patio, courtyard or plaza; and*
- 5) *tables with umbrellas for open air eating in common areas and not associated with tenant use (i.e., restaurant) or outdoor furniture.*

The Project is comprised of +/- 62,044 square feet of approved GFA and is designed to include one (1) pedestrian amenities as shown on the PSP included with this application.

Article 3.E.1.C.2 – Performance Standards for a PDD

The development proposal meets **Article 3.E.1.C.2 – Performance Standards** for a PDD as follows:

a. Access and Circulation

1) Minimum Frontage

PDDs shall have a minimum of 200 linear feet of frontage along an arterial or collector street unless stated otherwise herein.

The Project exceeds this standard.

2) PDDs shall have legal access on an arterial or collector street.

The Project has access on Congress Avenue, which is an arterial street.

3) Vehicular access and circulation shall be designed to minimize hazards to pedestrians, non-motorized forms of transportation, and other vehicles. Merge lanes, turn lanes and traffic medians shall be required where existing or anticipated heavy traffic flows indicate the need for such controls.

The Project is designed to meet all standards for road design.

4) Traffic improvements shall be provided to accommodate the projected traffic impact.

Please refer to the Traffic Analysis for discussion regarding traffic improvements, if any.

5) Cul-de-sacs

No local streets or cul-de-sacs are proposed. As such, the Project meets this Performance Standard.

6) Nonresidential PDDs shall provide cross access to adjacent properties where possible, subject to approval by the County Engineer.

A shared access is provided along the south property line.

7) Streets shall not be designed nor constructed in a manner which adversely impacts drainage in or adjacent to the project.

All streets and internal vehicular use areas are designed to ensure appropriate drainage is achieved.

- 8) *Public streets in the project shall connect to public streets directly adjacent to the project. If no adjacent public streets exist, and the County Engineer determines that a future public street is possible, a connection to the property line shall be provided in a location determined by the County Engineer. This standard may be waived by the BCC.*

No public streets are proposed in the Project. As such, this criterion is not applicable.

b. *Street Lighting*

Streetlights shall be a maximum of 25 feet in height and shall be installed along all streets 50 feet in width or greater. The light fixture shall be designed to direct light away from residences and onto the sidewalk and street and shall comply with Article 5.E, PERFORMANCE STANDARDS.

Any future street lighting proposed with the Project will comply with Article 5.E.

c. *Median Landscaping*

Refer to the most recent Engineering and Public Works Operations - Streetscape Standards available from the PBC Engineering Department.

This Performance Standard is not applicable as no public roads are proposed.

d. *Street Trees*

Street trees shall meet the Canopy tree requirements of Article 7, LANDSCAPING and planting standards pursuant to Engineering and Public Works Operations – Streetscape Standards, and as follows:

- 1) Street trees shall be spaced an average of 50 feet on center. Palms meeting the requirements of Article 7, LANDSCAPING and Engineering and Public Works Operations - Streetscape Standards, may be planted as street trees if spaced an average of 40 feet on center.*
- 2) Street trees shall be located along both sides of all streets 50 feet in width or greater and shall be planted between the edge of pavement and sidewalk. Appropriate root barrier techniques shall be installed where applicable.*
- 3) Street trees shall be installed in accordance with the phasing of the Planned Development pursuant to Art. 7.E.4.B.1, Planned Developments. For Residential PDDs, planting of street trees shall be completed prior to the issuance of the final certificate of occupancy within that phase or pursuant to conditions of approval.*
- 4) This requirement may be waived or modified by the County Engineer if the location of the proposed street trees conflict with requirements of Art. 11, SUBDIVISION, PLATTING AND REQUIRED IMPROVEMENTS.*

This Performance Standard is not applicable as no public roads are proposed. The internal parking lot and vehicular use areas will be landscaped in accordance with Article 7, LANDSCAPING.

e. *Bike Lanes*

Bike lanes shall be provided in all streets 80 feet in width or greater, unless an alternative is approved by the County Engineer in accordance with Article 11, SUBDIVISION, PLATTING, AND REQUIRED IMPROVEMENTS.

This Performance Standard is not applicable as no public roads proposed shall exceed 80 feet in width.

f. Mass Transit

All nonresidential PDDs over five acres and 50,000 square feet, and all PUDs over 50 units, shall comply with the following, unless waived by the DRO:

1) The location of a Bus Stop, Boarding and Alighting Area shall be shown on the master plan and/or final site plan prior to approval by the DRO, unless written conflicts that one is not required. The purpose of this easement is for the future construction of Mass Transit infrastructure in a manner acceptable to Palm Tran;

2) Prior to the issuance of the first building permit, the property owner shall convey to PBC an easement for a Bus Stop, Boarding and Alighting Area, in a location and manner approved by Palm Tran. As an alternative, prior to Technical Compliance of the first plat, the property owner shall record an easement for a Bus Stop, Boarding and Alighting Area in a manner and form approved by Palm Tran. The property owner shall construct continuous paved pedestrian and bicycle access compliant with the Americans with Disabilities Act (ADA) to and through the Bus Stop Boarding and Alighting Area; and

3) All PDDs with more than 100 units shall comply with the following requirement:

Prior to the issuance of the building permit for the 100th unit, the petitioner shall construct a Palm Tran approved mass transit shelter with appropriate access lighting, trash receptacle and bicycle storage. The location of the shelter shall be within an approved Bus Stop Boarding and Alighting Area easement. Any and all costs associated with the construction and perpetual maintenance shall be funded by the petitioner.

The proposed MUPD is less than 5 acres. As such, this criterion does not apply.

g. Utilities

All utility services located in a utility easement, such as telephone, cable, gas, and electric, shall be installed underground or combination/alternative acceptable to the DRO.

Utility services for the Project will be designed to comply with this Standard.

h. Parking

1) Residential Uses

Parking for residential uses shall comply with Article 6, PARKING. The DRO may require a covenant to be recorded limiting the affected area to a specific use or uses.

This Performance Standard is not applicable as no residential uses are proposed in conjunction with the Project.

2) *Nonresidential Uses*

Nonresidential uses located within a PDD may apply the parking standards indicated in Table 6.A.1.B, Minimum Off-Street Parking and Loading Requirements or the minimum/maximum parking standards below. The site plan shall clearly indicate which parking standards are being utilized for the entire site.

A Type 2 Variance request to reduce the minimum required parking is included with this application. This request is supported by a parking statement and the Property's proximity to the Palm Beach International Airport.

3) *Design*

Parking areas open to the public shall be interconnected and provide safe efficient flow of traffic. Parking areas directly adjacent to other parking areas in the same project shall have cross access.

The proposed development provides for the parking areas that are open to the public to be interconnected and have cross access.

4) *Cross Access*

Cross access shall be provided to adjacent internal uses/properties, if required by the DRO.

The property to the east is residential, and as such cross access is not required or desired as the uses are not strictly compatible. A shared access along the south property line is proposed.

5) *Location-Non-residential PDDs*

A minimum of ten percent of the required parking shall be located at the rear or side of each building it is intended to serve.

The Project complies with this standard and provides the required parking at the rear of the building.

6) *Distance*

All parking spaces shall be located within 600 linear feet of a public entrance of the building which it is intended to serve.

a) *Remote Parking Areas*

Paved pedestrian pathways shall be provided to all parking areas in excess of 400 feet from a public entrance. Pathways shall be unobstructed grade separated and/or protected by curbs, except when traversing a vehicular uses area, and clearly marked.

The proposed parking and paved pedestrian pathways comply with this standard and provide parking areas with appropriate access to public entrances of buildings.

i. *Way Finding Signs*

Off-site directional signs, consistent with the on-site directional sign standards in Article 8, SIGNAGE, may be allowed along internal streets in the R-O-W, subject to approval by the County Engineer.

The signage for the proposal shall comply with this standard.

- j. Emergency Generators - A permanent emergency generator shall be required for all Type II and Type III CLFs, Nursing or Convalescent Facilities, and PDD clubhouses 20,000 square feet or greater, and shall meet the standards of Art. 5.B.1.A.18, Permanent Generators.*

This Performance Standard is not applicable to the Project.

Article 3.E.3.B.1 – Design Objectives for a MUPD

The development proposal meets **Article 3.E.3.B.1 – Design Objectives** for a MUPD as follows:

- a. Allow for both residential and non-residential uses within a project that is designed to incorporate vertical or horizontal integration of residential uses, to foster compatibility within and adjacent to the project;;*

The proposed MUPD is non-residential in nature.

- b. Provide innovative building location and orientation;*

Innovative architectural design and site layout is utilized to provide for orientation onto active pedestrian and plaza spaces, where possible.

- c. Protect adjacent residential uses from potential adverse impacts;*

The proposed MUPD is designed to orient the active components of the proposed uses in the western portion of the Property to protect the existing neighborhood to the east from potential adverse impacts. An incompatibility buffer is also proposed to mitigate any potential impacts.

- d. Provide interconnection between uses in and adjacent to the project;*

The proposed MUPD provides a cross access between uses within the Project. The property to the east is residential, and as such cross access is not required or desired as the uses are not strictly compatible.

- e. Allow for landscape design that enhances the appearance of the project;*

Landscaping is proposed to provide an attractive streetscape and enhance the design features of the Project.

Article 3.E.3.B.2 – Performance Standards for a MUPD

The development proposal meets **Article 3.E.3.B.2 – Performance Standards** for a MUPD as follows:

- a. Non-vehicular circulation;*

The proposed site design provides for a high level of circulation for pedestrians, including appropriate connections across vehicular use areas. Internal sidewalks connect to the sidewalks along public streets. Where sidewalks cross vehicular use areas, they are designed to be constructed of pavers, brick, decorative concrete, or similar pavement treatment.

b. Landscape buffers;

Landscaping is proposed to provide an attractive streetscape and enhance the design features of the Project.

c. Cross access;

The proposed MUPD provides a cross access between uses within the Project. The property to the east is residential, and as such cross access is not required or desired as the uses are not strictly compatible.

d. Parking;

Parking is proposed in compliance with Code requirements, except as noted in the requested Type 2 Variance to reduce the minimum parking requirement as the use does not generate parking demand anticipated by the Code minimum requirements.

MUPD Property Development Regulations

The proposed development is consistent with Table 3.E.3.D – MUPD Property Development Regulations, except as noted in the variance requests. Therefore, the Petitioner demonstrates consistency with the Code.

The Project proposes redevelopment of a vacant and underutilized property located along the North Congress Avenue thoroughfare with the URA/RRO area. The Project's proposed commercial uses will result in the provision of a wider range of goods and services than is currently available in this area of the County.

Article 4: The Project also complies with all applicable portions of Article 4.b, Supplementary Use Standards.

Article 5: The Project complies with ULDC Sections 5.B.1.A.8.A, 5.B.1.A.8.B, 5.B.1.A.8.C.2, and 5.B.1.A.8.D as all refuse containers will be stored in a storage area with a minimum dimension of ten feet (10') by ten feet (10'), located to minimize turning and backup movements by pick-up and removal vehicles, set back a minimum of twenty-five feet (25') from the property line, and screened from view by a solid enclosure and a swing-gate screening with a three foot (3') hedge on the exposed exterior sides of the enclosure. In accordance with ULDC Section 5.C Architectural Review will be completed at time of Building Permit.

Article 6: A Type 1 Variance is included with this request to provide relief from the parking regulations in Article 6 as 132 parking spaces are provided where 153 parking spaces are required for the proposed use. The parking stalls are primarily proposed to be 90-degree with a minimum stall size of 9-foot width and 18.5-foot depth. These parking stalls are served by drive aisles with a minimum width of 25 feet as required for 90-degree parking stalls that are 9.5 feet wide by 18.5 feet deep. Parking stalls are also provided at a 60-degree angle, which are 9-feet wide by 19-feet deep and are served by a 16' wide drive aisle. Further, the access complies with the standards of Table 6.B.3.A with the provision of a 25-foot-wide two-way access way where a 25-foot-wide access way is required. A single

loading zone is proposed adjacent to the building where two (2) loading spaces are required. As such, a Type 1 Waiver to reduce the number of loading stalls is included with this application.

Article 7: The Project is designed to comply with or exceed the landscape standards within Article 7. As required, the proposed ROW buffer width along Congress Avenue is 20 feet, while the proposed ROW buffer width along Kentucky Street is 15 feet with a maximum utility overlap of 5 feet. The compatibility buffer along the South property line provides a minimum width of eight feet as required. The provided incompatibility buffer along the east property line meets the 15-foot width requirement. Foundation planting is provided along 40% of all facades with a minimum width of eight feet as required by Article 7. Interior and terminal landscape islands are provided for all 90-degree parking stalls with a maximum of up to 12 parking spaces in a row where a maximum of 12 are permitted and meet the minimum dimensional requirements of the ULDC with the provision of a minimum 8-foot width and 15-foot depth with an additional foot of width added for each parking space above 10 spaces in a row.

Article 8: Freestanding and wall signs are proposed in compliance with the provisions of Article 8 and the previously approved conditions of approval. A Preliminary Master Sign Plan is included for review. As such, the Project complies with the signage requirements in Article 8.

3. ***Compatibility with Surrounding Uses*** – The DOA is compatible and generally consistent with the uses and character of the land surrounding and in the vicinity of the Property. The Property is located in a mixed-use context with commercial uses to the north and west, vacant land to the south, and residential to the east. The property located across Congress Avenue to the west is designated CR/UT (Commercial Recreation, with and underlying UT) on the County's FLUM, located within the PO, Public Ownership zoning district, and developed as the Trump International Golf Club West Palm Beach. The property located across Oklahoma Street to the south is designated UI (Urban Infill) on the County's FLUM, located within the UI, Urban Infill zoning district, and is currently vacant, undeveloped land. The property located across Kentucky Street to the north is designated UI (Urban Infill) on the County's FLUM, located within the UI, Urban Infill zoning district, and developed for commercial use. Additionally, properties located to the north of the Property across Kentucky Street and properties adjacent to the Property to the east are designated MR-5 (Medium-residential, 5 units per acre) on the County's FLUM, located within the RS, Single Family Residential zoning district, and are developed as single family homes. As such, the site plan is designed to locate the buildings along Congress Avenue to the west, place drainage areas within the eastern portion of the Property, and provide an incompatibility buffer along the east property line.
4. ***Design Minimizes Adverse Impacts*** – The design of the Project minimizes adverse impacts, including visual impact and intensity of the proposed use on adjacent lands. The Project is designed to be compatible with existing residential uses to the east with the location of drainage areas oriented to provide a wide buffer between the proposed uses and the residences. In addition, a 20' wide incompatibility buffer is provided to ensure no adverse impacts to the adjacent residential. Further, the buildings are oriented to provide building frontage along North Congress Avenues, in order to provide an attractive streetscape passersby. The Project is also designed to provide the required dimensional and landscaping components to the maximum extent possible, which ensure that the Project is aesthetically pleasing and compatible with other uses in the area.
5. ***Effect on Natural Environment*** – The DOA minimizes environmental impacts, including, but not limited to, water, air, stormwater management, wildlife, vegetation, wetlands, and the natural

functioning of the environment. Furthermore, the Project is designed to comply with all County, State, and federal environmental requirements.

6. **Development Patterns** – The DOA will result in a logical, orderly, and timely development pattern. Petitioner proposes to redevelop a vacant and underutilized property with a commercial, lodging use, which will result in the provision of a wider range of goods and services than is currently available in the County. The Property is located within an identified redevelopment area adjacent to a major thoroughfare with multiple commercial and residential uses nearby. Furthermore, approval of the Project will promote efficient use of the County's land by developing an infill property with a vibrant mix of complementary uses.
7. **Adequate Public Facilities** – The DOA will not have an adverse effect on the ability of the County to provide adequate public facilities to the residents or businesses in the surrounding area. Please refer to the Traffic Statement and Drainage Statement that are included with this proposal.
8. **Changed Conditions or Circumstances** – There are changed conditions or circumstances that necessitate the DOA. The Property is currently vacant and underutilized. As the area has grown, the need for additional commercial lodging uses has increased such that Petitioner is seeking to develop the Property to provide better and improved services to the community. The growth of the County and surrounding area are changed circumstances that necessitate the requested DOA.
9. **Hazardous Material** – The Project will not generate noxious odors, noises, airborne pollutants, chemicals, or waste. As such, no special handling of waste will be required.

DEVELOPMENT ORDER ABANDONMENT – R-2007-1884

The proposed Hotel use is now a permitted use in the MUPD zoning district with a CH FLUM designation. As such, Petitioner proposes to abandon the In accordance with ULDC Section 2.B.7.F.6, Petitioner will demonstrate below that the requested Abandonment" is (a) consistent with the Plan; (b) is not in conflict with any portion of this Code and does not create any new nonconformities; (c) does not impact the approved concurrency requirements; and (d) is necessitated by changed circumstances.

- a. **Consistency with the Plan** – The Abandonment is consistent with the County's Comprehensive Plan. As detailed above, the prior approval allowed a Requested Use for a Hotel. The Hotel use is now permitted by right in the MUPD zoning district with a CH FLUM designation. Further, the Project is consistent with the Plan as detailed above. The Abandonment is needed in order to allow for the development of the Project. As such, the Abandonment is consistent with the County's Comprehensive Plan.
- b. **Consistency with the Code** – The Abandonment is consistent with the County's ULDC. As detailed above, the prior approval allowed a Requested Use for a Hotel. The Hotel use is now permitted by right in the MUPD zoning district with a CH FLUM designation. The Project is consistent with the ULDC as detailed above. The Abandonment is needed in order to allow for the development of the Project. As such, the Abandonment is consistent with the County's ULDC.
- c. **Adequate Public Facilities** – The Abandonment will not have an adverse effect on the ability of the County to provide adequate public facilities to the residents in the surrounding area. There

are adequate public services to serve the Project following the Abandonment as detailed in the Traffic Study and Drainage Statement included with this application.

- d. **Changed Conditions or Circumstances** – The Abandonment gives the Petitioner the opportunity to provide appropriate development for the Property. There are changed conditions or circumstances that necessitate the Abandonment. The Property is currently vacant and underutilized. As the area has grown, the need for additional commercial lodging uses has increased such that Petitioner is seeking to develop the Property to provide better and improved services to the community. The growth of the County and surrounding area are changed circumstances that necessitate the requested DOA.

TYPE 1 AND 2 VARIANCE STANDARDS

Pursuant to ULDC Section 2.B.7.E.6 and 2.C.5.E.4, Petitioner will demonstrate below for the Variance Requests that: a) special conditions and circumstances exist that are peculiar to the parcel of land, building, or structure, that are not applicable to other parcels of land, structures, or buildings in the same district; b) special circumstances and conditions do not result from the actions of Petitioner; c) granting the variance shall not confer upon Petitioner any special privilege denied by the Plan and this Code to other parcels of land, buildings, or structures, in the same district; d) literal interpretation and enforcement of the terms and provisions of the ULDC would deprive Petitioner of rights commonly enjoyed by other parcels of land in the same district, and would work an unnecessary and undue hardship; e) granting the Variance Request is the minimum variance that will make possible the reasonable use of the parcel of land, building or structure; f) granting the Variance Request will be consistent with the purposes, goals, objectives and policies of the Plan and this Code; and, g) granting the Variance Request will not be injurious to the area involved or otherwise detrimental to the public welfare.

- a) **Special conditions and circumstances exist that are peculiar to the parcel of land, building, or structure, that are not applicable to other parcels of land, structures, or buildings in the same district.**

V1: Special conditions and circumstances exist which are peculiar to the Property and are not applicable to other lands, structures, or buildings in the same zoning district. This variance entails reduction in lot area from 5 acres to 2.78 acres. It is important to note that this variance was previously approved for the existing MUPD zoning to be in place.

The 2.78-acre Property is composed of an assemblage of lots, and has a limited frontage along Congress Avenue. The Infill and Redevelopment Study presented to the Board of County Commissioners in 2004 found that 37.9% of the developable lands within the URA are sites of less than 5 acres in size. Policy 1.2.2-a of the Comprehensive Plan states that “to encourage redevelopment and infill, the County shall allow parcels of land that cannot fulfill the minimum acreage requirements for a Planned Development to develop consistent with the character, intensity and density of the: 1) existing built environment; and/or 2) potential built environment, whose density is calculated at the standard density permitted by the land use designation applicable”. The MUPD zoning exists for the Property, and therefore the applicant is required to meet the MUPD zoning requirements. The current code requires a minimum of 5 acres for an MUPD with a Commercial High future land use designation. The current code does not consider the URA situation where 5 acres and larger developable parcels of land are very limited. Considering that the Property is an assemblage of parcels to create a larger Property for redevelopment in the URA, there are special conditions relating

to the Property.

Considering the foregoing, there are special conditions and circumstances that are peculiar to the Property, which are not applicable to other parcels of land, structures or buildings in the County. As such, Petitioner respectfully requests approval of the MUPD lot area related variance.

V2 and V3: Special conditions and circumstances exist which are peculiar to the Property and are not applicable to other lands, structures, or buildings in the same zoning district. These variances entail allowing reduced setbacks from the front property line along Congress Avenue (26 feet proposed where 45 feet required), and side street setback along Kentucky Street (26.6 feet proposed where 45 feet required). It is important to note that front and side street setback variances were previously approved for the previously approved hotel use. Petitioner has redesigned the site plan to bring the Property into greater compliance with the ULDC requirements than was previously approved in all instances with significantly reduced setback variance requests. It is also important to note that the Infill and Redevelopment Study presented to the BCC in 2004 acknowledged the difficulty that potential redevelopment projects will have in assembling large parcels of land in the URA. The combination of lots to create the Property results in an irregular shaped parcel, and makes it difficult to meet the required setbacks that result from a combination of promoting infill development and meeting the other property development regulations (i.e. parking, landscaping, drainage). When evaluating these setback variances, it is important to note that the other variances related to property development regulations such as lot size all play an integral part of the setback variances, and based on similar justifications for variance 1 there are special conditions and circumstances that are peculiar to the Property, which are not applicable to other parcels of land, structures or buildings in the County. As such, Petitioner respectfully requests approval of the Setback Variances.

V4: Special conditions and circumstances exist which are peculiar to the Property and are not applicable to other lands, structures, or buildings in the same zoning district. The Variance Request entails allowing a reduction in the minimum parking requirement for the Project. Current County parking code results in 153 required parking spaces for the 122 room hotel. The Project is designed to provide 132 parking spaces, thus resulting in a parking variance of 21 spaces (+/- 13.75%). The proposed 132 space provision equates to 1.08 parking spaces/room for the 122 rooms proposed.

The ITE Parking Generation Manual, 5th Edition, for Land Use Code 310, Hotel, was reviewed by an independent third party traffic engineer. It shows that the weekday average parking demand is 0.74 parking spaces/room. This rate is less than proposed 1.04 parking spaces/room. Using the ITE rate, the 122 rooms need 91 spaces. The proposed 132 spaces provided is higher than the projected parking demand. The ITE parking rate demonstrates that the proposed 132 parking spaces will meet the parking demand. Please refer to the Parking Statement included with this application. Therefore, there are special conditions and circumstances that are peculiar to the Property, which are not applicable to other parcels of land, structures or buildings in the County. As such, Petitioner respectfully requests approval of the Parking Variance.

b) Special circumstances and conditions do not result from the actions of Petitioner.

V1 through V4: The special conditions and circumstances noted above do not result from the actions of the Petitioner. As noted above, the special conditions and circumstances relate to difficulty in assembling large tracts of land within the URA, need to place the building so as to create a more urban environment, the irregular geometry of the Property, and changes in parking demand since the adoption of the County Code. As such, the special circumstances and conditions noted above do not result from the actions of the Petitioner.

- c) **Granting the Variance shall not confer upon the Applicant any special privilege denied by the Plan and this Code to other parcels of land, buildings, or structures, in the same district.**

V1 through V4: Granting the requested variances will not confer on the Petitioner any special privilege that is denied to other properties within the MUPD zoning district. Given the fact that the greatest land area possible was assembled to allow for this redevelopment within the URA, the need to create a more urban form through building placement, and that parking demand for the Project is less than the standard parking rate in the County Code, the County would review any similarities and provide the same consideration should another property be subject to the same conditions. Therefore, the granting of the requested variances will not give the Petitioner any special privilege denied by the Plan and the ULDC to other parcels of land in the immediate area and to other parcels of land in the MUPD district.

- d) **Literal interpretation and enforcement of the terms and provisions of this Code would deprive the Applicant of rights commonly enjoyed by other parcels of land in the same district and would work an unnecessary and undue hardship.**

V1 through V4: Literal interpretation and enforcement of the terms and provisions of the ULDC would deprive the Petitioner of rights commonly enjoyed by other parcels of land in the same district and would work an unnecessary and undue hardship. The literal interpretation of the Code would result in an unnecessary and undue hardship on Petitioner and would not allow MUPD development typically envisioned for urban infill and targeted redevelopment areas. In addition, literal interpretation and enforcement of the minimum acreage requirements for the MUPD would deprive Petitioner of rights commonly enjoyed by other parcels of land in the District located in areas where vacant land assemblage is more easily accomplished (outside the URA). Not allowing the variance would work an undue hardship as there is no additional land available in the vicinity to supplement the project area. Further, the literal interpretation and enforcement of the terms and provisions of the current ULDC do not take into account the fact that this project is located within the URA and is also designated as a PRA. The County has acknowledged the difficulties of assembling large tracts of land in the URA for development in their Infill and Redevelopment Study. Enforcement of the current Code requirements for setbacks would deny Petitioner of rights commonly enjoyed by other parcels in this zoning district and would not allow development at the intensities anticipated in an URA area and would cause an unnecessary and undue hardship. Lastly, the requirement to provide additional parking would unnecessarily reduce the amount of landscape area, pervious area, and drainage area available on the Property. The Parking Study provided in support of this Parking Variance demonstrates that the actual parking demand is 91 parking spaces. Considering that the Project is designed to provide 132 parking spaces, significantly more than required by the use, the requirement to provide additional parking beyond that proposed would deprive Petitioner of rights commonly enjoyed in the MUPD zoning district and work an unnecessary and undue hardship.

- e) **Granting the variance is the minimum variance that will make possible the reasonable use of the parcel of land, building or structure.**

V1 through V4: The variances requested are the minimum necessary to allow development of the Project. Urban design principles call for siting of the hotel closer to Congress Avenue. In addition, it was contemplated in the Infill and Redevelopment Study that it would not be possible to assemble large tracts of land for redevelopment in this development area. Petitioner has assembled the largest

tract available and the proposed lot area and setback variances are the minimum needed to make use of the Property for infill redevelopment. Further, the requirement to provide additional parking would unnecessarily reduce the amount of landscape area, pervious area, and drainage area available on the Property. The Parking Study provided in support of this Parking Variance demonstrates that the actual parking demand is 91 parking spaces. Considering the foregoing, the requested variances are the minimum variance that will ultimately make possible the reasonable use of the Property.

f) Granting the variance will be consistent with the purposes, goals, objectives and policies of the Plan and this Code.

V1 through V4: Granting the variances requested is consistent with the purposes, goals, objectives, and policies of the Comprehensive Plan and the ULDC. Approval of the Project is consistent with the purposes, goals, objectives, and policies of the Plan, including standards for building and structural intensities and densities, and intensities of use. As noted above, the Property is designated CH/5, Commercial High with an underlying MR-5, on the County's FLUA. The Project proposes to provide much needed infill development within the URA and RRO within the County. The Project is designed to provide a transition from the highly travelled and intense Congress Avenue right-of-way to the existing residential uses to the east with the higher intensity hotel use located along Congress Avenue and passive drainage areas and incompatibility buffer located to the east to ensure an appropriate transition. The Project will serve community and regional commercial demand for individuals and businesses in need of lodging within this area.

Approval of the Project is not only consistent with the existing FLU designation of the Property, but also with Policy 2.2.c of the PBC Comprehensive Plan, which requires the PBC Code to be consistent with appropriate elements of the PBC Comprehensive Plan including compatibility with adjacent future land uses. The Project is consistent with Policy 1.2-b of the Plan, which requires that the County encourage and support sustainable urban development, including infill redevelopment. The proposed Project will allow for the unified infill redevelopment of the Property to provide the goods and services required by the surrounding community, consistent with Policy 1.2-b. In addition, the Project complies with the maximum 0.85 FAR provided in TABLE 2.2-e.1 of the Future Land Use Element. Considering the foregoing, the Project is consistent with the County's Plan. Considering the foregoing, approval of the requested variances is vital to the viability of the Project, which is consistent with the County Comprehensive Plan and ULDC.

g) Granting the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

V1 through V4: Granting the variances requested will not be injurious to the area involved or otherwise detrimental to the public welfare. The proposed development will allow for beneficial redevelopment of this infill property, thus serving a benefit to the surrounding area and removing blight from the community. The Project's proposed parking has been analyzed and designed to ensure that there is more than sufficient parking provided and adjacent properties will not be impacted. Further, approval for a parking reduction provides additional area for green space, amenity areas, and drainage areas. As such, granting the variances will not be injurious to the area involved or public welfare, but rather it will ensure that the Project is a valuable community asset that will enhance the area, create a sense of place, and benefit the welfare of the community.

TYPE 2 WAIVER REQUEST AND STANDARDS

Petitioner respectfully requests approval of a Type 2 Waiver to extend the hours of operation for the Hotel, which is located within 250 feet of Residential Future Land Use and Residential use from 6:00 AM and 11:00 PM (required by Table 5.E.5.E) to 24 hours a day ("Waiver"). Petitioner will demonstrate below that the requested Waiver meets the standards set forth in Section 2.B.7.D.3 of the County's ULDC.

- 1. The Waiver does not create additional conflicts with the specified Section(s) of the ULDC, and is consistent with the stated purpose and intent and standards.**

The granting of this Waiver will not create any additional conflicts with the ULDC and is consistent with the stated purpose, intent and standards. Extended hours of operation have been granted throughout the County for many commercial uses that are adjacent to residential uses, including but not limited to restaurants, fitness centers, gas stations, and convenience stores. The objective of the hours of operation limitation is to protect residential areas from the potential adverse effects of commercial activity between the hours of 11:00 p.m. and 6:00 a.m. that stem from potentially disruptive activities such as deliveries and stocking. The proposed hotel use location within the URA and the fact that it is considered an infill parcel for development purposes grants the Property special conditions and circumstances that are peculiar to the land as the Plan anticipated more intense development in this area. The shallow depth of the commercial corridor along Congress Avenue at this point is an added difficulty for larger commercial developments. Petitioner has minimized the impact of this Waiver on adjacent residential by limiting functions associated with the hours between 11:00 p.m. and 6:00 a.m. to checking in guests and limiting all accessory uses and activities, such as the restaurant and use of the outdoor recreational facilities to the hours between 6:00 a.m. and 11:00 p.m. daily. The only outdoor activity associated with the 24-hour operation is the arrival of the customers' cars and their entrance into the hotel. The hotel operation requires 24 hour operation of limited functions. Considering the foregoing, approved of the requested Waiver will not create additional conflicts with the ULDC, and is consistent with the stated purpose and intent and standards.

- 2. The Waiver will not cause a detrimental effect on the overall design and development standards of the project, and will be in harmony with the general site layout and design details of the development.**

The proposed Waiver will not cause a detrimental effect on the overall design of the Project and will be in harmony with the general site layout and design details of the development. Palm Beach County has given this area the designation of an URA and PRA which anticipate a higher level of development intensity. The effect of Policy 1.2.3-f above on the public welfare was taken into consideration when the Policy was approved. In addition, the functions of the 24-hour check in and registration of customers will be conducted within the hotel, with the exception of the cars actually entering and parking on site. The proposed Project provides a Type 2 Incompatibility Buffer twenty feet (20') in width between the hotel and the residential area to the east, which should mitigate any perceived impact of this function on the residential area.

- 3. The alternate design option recommended as part of the Waiver approval, if granted, will not adversely impact users of the project or adjacent properties.**

The proposed Waiver will not adversely impact users of the Project or adjacent properties. Palm Beach County has given this area the designation of an URA and PRA which anticipate a higher level of

development intensity. The effect of Policy 1.2.3-f above on the public welfare was taken into consideration when the Policy was approved. In addition, the functions of the 24-hour check in and registration of customers will be conducted within the hotel, with the exception of the cars actually entering and parking on site. The proposed Project provides a Type III Incompatibility Buffer twenty feet (20') in width between the hotel and the residential area to the east, which should mitigate any perceived impact of this function on the residential area. As such, approval of the requested Waiver will not adversely impact users of the Project or adjacent properties.

Land Development Design Standards Waiver

Petitioner respectfully requests approval of a Land Development Design Standards waiver to allow a throat distance of 25 feet for the northern proposed driveway to Kentucky Street in lieu of the require 50 foot throat distance for Intermediate Driveways. Kentucky Street is a local roadway with low volumes and, therefore, the reduced throat distance will be adequate for this site and will not impact the arterial roadway network. Please see the Waiver Request Letter submitted along with this application.

CONCLUSION

This application is consistent with the Goals and Objectives of The Plan and meets the technical requirements of the ULDC. Based on the above and attached information, Petitioner respectfully requests approval of the DOA, Abandonment, Type 2 Variance, Subdivision Variance, Type 2 Waiver, Type 1 Variance, and Type 1 Waiver requests detailed above.

