

RESOLUTION NO. R-91-1072

RESOLUTION APPROVING ZONING PETITION NO. **85-61(A)**
SPECIAL EXCEPTION & MODIFICATION PETITION OF
MARIA RUSSELL & MADELENE MATSUMA

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

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

WHEREAS, Petition No. **85-61(A)** was presented to the Board of County Commissioners of Palm Beach County, sitting as the Zoning Authority, at its Public Hearing conducted on May **30, 1991**; and

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

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

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

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

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

NOW, THEREFORE, **BE IT RESOLVED** BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that Petition No. **85-61(A)**, the petition of MARIA RUSSELL AND MADELENE MATSUMA, TRUSTEES, BY KIERAN J. KILDAY, AGENT, for a SPECIAL EXCEPTION TO AMEND THE SITE **PLAN** FOR A PCD TO RELOCATE BUILDING SQUARE FOOTAGE, and for a MODIFICATION OF COMMISSION REQUIREMENTS - RESOLUTION NO. **R-85-1876J**, CONDITIONS NO. **2A, 2F, 5, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24** and **26** (PERTAINING TO ENGINEERING AND VEGETATION PRESERVATION) on a parcel of land lying Southeast **1/4** of Section **24**, Township **44** South, Range **42** East, described as follows: COMMENCE at the Southwest corner of the Southeast **1/4** of said Section **24**; thence South **87°04'21"** East along the south line of said Section **24** for **529.25** feet; thence North **02°02'19"** East for **54.54** feet to the POINT OF BEGINNING and to a **1/2"** pipe; thence North **02°02'19"** East along the east right-of-way of Price Street for **615.84** feet to a **1/2"** pipe; thence South **87°05'54"** East along the north line of the South **1/4** of said Section **24** for **1,135.13** feet to a **1/2"** pipe; thence South **02°03'33"** West along the east line of the West **1/2** of the Southwest **1/4** of the Southeast **1/4** of said Section **24** for **611.01** feet to a nail and disc and to a point on a curve said point bears North **03°19'14"** East from the radius point; thence northwesterly along a circular

curve to the left having a radius of 5,789.58 feet a central angle of 00°23'36" for an arc distance of 39.74 feet to a nail and disc and to a point of tangency; thence North 87°04'22" West for 625.93 feet to a 1/2" pipe; the last two mentioned courses being coincident with the northerly right-of-way line of Lake Worth Road (S.R. 802); thence North 02°02'50" East for 135.02 feet to a 1/2" pipe; thence North 87°04'21" West for 150.02 feet to a 1/2" pipe; thence South 02°02'50" West for 135.02 feet to a nail and disc and to a point on a curve, said point bears North 02°55'10" East from the radius point; thence northwesterly along a circular curve to the left having a radius of 7,699.44 feet a central angle of 01°22'01" for an arc distance of 183.70 feet to a 1/2" pipe and to a point of tangency, thence North 88°26'51" West for 135.51 feet to the POINT OF BEGINNING; the last two mentioned courses being coincident with the northerly right-of-way of Lake Worth Road (S.R. 802), and being located ON THE N. SIDE OF LAKE WORTH RD., APPROXIMATELY .1 MILE E. OF MILITARY TR., IN THE CG ZONING DISTRICT, was approved on May 30, 1991, as advertised, subject to the following conditions:

A. STANDARD CONDITIONS

1. The petitioner shall comply with all previous conditions and time certain conditions of approval, unless expressly modified herein.
2. The site plan shall be amended to indicate compliance with all minimum property development regulations and land development requirements.
3. Development of the site is limited to the uses and site design shown on the site plans approved by the Board of County Commissioners (Exhibits 54 and 55). Any modifications must be approved by the Board of County Commissioners unless the proposed use or design changes are permitted pursuant to Section 402.7 (E)2 (b) (Site Plan Review Committee Powers and Standards of Review).

B. DUMPSTER

1. All garbage and refuse receptacles shall be confined to a designated area. Dumpsters or other trash collection devices shall be concealed behind walls having an architectural treatment compatible with the principal building. The open end of the enclosure shall have an obscure, opaque gate.

C. HEALTH

1. Generation and disposal of hazardous effluents into sanitary sewerage system shall be prohibited unless adequate pretreatment facilities approved by the Florida Department of Environmental Regulation (FDER) and Agency responsible for sewage works are constructed and used by project tenants or owners generating such effluents.
2. Sewer service is available to the property. Therefore, no septic tank shall be permitted on the site.
3. Water service is available to the property. Therefore, no well shall be permitted on the site to provide potable water.

4. No portion of this project is to be approved on well and/or septic tank, existing or new. Existing septic tanks are to be abandoned, in accordance with Chapter 10-D-6, F.A.C.

D. LANDSCAPING

1. Landscaping within the twenty-five (25) foot landscape buffers abutting all rights-of-way shall be upgraded to include:
 - a. Clusters of twelve (12) foot tall native canopy trees planted an average of twenty (20) feet on center (as shown on Landscape Plan, PR. No, 91-4489).
 - b. One twelve (12) foot tall native palm tree for each thirty (30) linear feet.
 - c. A continuous native hedge a minimum of twenty-four (24) inches in height at installation, to be maintained at thirty-six (36) inches in height.

In the case of abandonment of North Price Street, the landscaping required for the buffer along that street shall be upgraded to include:

- a. Native canopy trees, a minimum of twelve (12) feet tall, placed thirty (30) feet on center.
 - b. A continuous native hedge, a minimum of twenty-four (24) inches in height at installation, to be maintained at thirty-six (36) inches in height.
2. Landscaping along the east property line shall include:
 - a. Native canopy trees, a minimum of twelve (12) feet tall, placed thirty (30) feet on center.
 - b. A continuous native hedge a minimum of twenty-four (24) inches in height at installation, to be maintained at thirty-six (36) inches in height.
 3. All trees within the interior parking area shall be twelve (12) feet in height or greater. Landscape islands or punch outs shall be provided in the parking area in compliance with the landscape plan submitted to the Zoning Division (PR. No. 91-4489).
 4. Landscape tabular data shall be revised to reflect conformance to all landscape conditions.
 5. The petitioner shall relocate Oak No. 716, as indicated on the tree survey, in a manner and location acceptable to the Zoning Division.

E. ENGINEERING

1. In accordance with the approved May 1991 Palm Beach County Drainage Permit, the Developer shall provide discharge control and treatment for the stormwater runoff in accordance with all applicable agency requirements in effect at the time of the permit application. However, at a minimum, this development shall retain on-site the stormwater runoff generated by a three (3) year-one (1)

hour storm as required by the Permit Section, Land Development Division. In the event that the subject site abuts a Department of Transportation maintained roadway, concurrent approval from the Florida Department of Transportation will also be required. The drainage system shall be maintained in an acceptable condition as approved by the County Engineer. In the event that the drainage system is not adequately maintained as determined by the County Engineer, this matter will be referred to the Code Enforcement Board for enforcement.

2. The Property owner shall fund the construction of left turn lanes, west approach on Lake Worth Road at the project's entrance road(s) concurrent with on-site paving and drainage improvements. Funding of the construction shall be completed prior to the issuance of the first Certificate of Occupancy or prior to September 1, 1991 whichever shall first occur. The property owner shall further construct a right turn lane east approach at the project's entrance currently shown on the Site Plan east of the existing out parcel. Should this petitioner not be able to secure the necessary permits from the Florida Department of Transportation then this petitioner shall be relieved from this Condition. Construction of the right turn lane shall be constructed within dedicated right-of-way a minimum of twelve (12) feet in width with geometries approved by the Florida Department of Transportation and the Office of the County Engineer. Dedication shall be accomplished prior to September 1, 1991.
3. The property owner shall pay a Fair Share Fee in the amount and manner required by the "Fair Share Contribution for Road Improvements Ordinance" as it presently exists or as it may from time to time be amended. Credit for existing funds previously paid for the Military Trail construction shall be given.
4. Construct North Price Street from the existing paved terminus of North Price Street north to the project's north entrance road. This construction shall be to collector street standards, 2-10 foot travel lanes plus one (1) 5 foot concrete sidewalk on the east side of North Price Street. Construction shall commence concurrent with on-site paving and drainage permits issued from the office of the County Engineer and shall be completed prior to the issuance of a Certificate of Occupancy.
5. The Developer shall install signalization if warranted and permitted by the Florida Department of Transportation as determined by the County Engineer at the project's entrance(s) and Lake Worth Road. Should signalization not be warranted after 12 months of the final Certificate of Occupancy this property owner shall be relieved from this condition.
6. This property shall not be subdivided into Fee Simple lots without meeting all Subdivision and Platting Ordinances.

7. Engineering conditions numbers 14, 15, 16, 17, 18, 19, 20, 21, 22 and 24 for Zoning Petition 85-61, Resolution No. R-85-1876J, are hereby deleted. These are as follows:
- "14. The development shall retain on-site 85% of the stormwater runoff generated by a three (3) year-one hour storm per requirements of the Permit Section, Land Development Division.
 15. The property owner shall convey for the ultimate right-of-way of North Price Street, 30 feet from centerline approximately an additional 15 feet within 90 days of adoption of the Resolution by the Board of County Commissioners; conveyance must be accepted by Palm Beach County prior to the issuance of first Building Permit.
 16. The developer shall construct:
 - a) North Price street as a 3 lane section from Lake Worth Road to the project's north entrance road, plus appropriate tapers.
 - b) Signalization when warranted as determined by the County Engineer at the intersection of North Price Street and Lake Worth Road.
 - c) Left turn lane on Lake Worth Road at the project's west entrance all concurrent with on-site paving and drainage improvements pursuant to a paving and drainage permit issued from the office of the County Engineer.
 17. The Developer shall pay a Fair Share Fee in the amount and manner required by the "Fair Share Contribution for Road Improvements Ordinance" as it presently exists or as it may from time to time be amended. The Fair Share Fee for this project presently is \$266,331.00.
 18. Based on the amount of traffic generated by this development, the Developer has agreed to contribute an additional \$333,669 toward Palm Beach County's existing Roadway Improvement Program, these total funds of (\$600,000) are to be paid per Condition No. 22.
 19. The Developer shall provide the existing "not included" parcel with a cross access easement prior to site plan certification.
 20. The property owner shall obtain an on-site Drainage Permit from the Palm Beach County Engineering Department Permit section prior to the issuance of a Building Permit.
 21. The Developer shall obtain a Turnout Permit from the Palm Beach County Engineering Department, Permit Section for access onto North Price Street and a permit from the Florida Department of Transportation for access onto Lake Worth Road.

22. The Property owner shall fund the construction of Military Trail as a 4-lane median divided section from Lake Worth Road to a point **200** feet south of Melaleuca Lane per Palm Beach County's approved construction plans. Funding of this construction by this property owner shall be limited to an amount of **\$600,000 as** indicated in Condition No. **18**. A letter of credit in this amount shall be posted within sixty (**60**) days of such posting being requested by the County Engineer, but no earlier than August **1986**. This letter of credit may then be called upon at any time to let the contract for construction of Military Trail.

It is the intent that Palm Beach County will acquire the additional right-of-way for Military Trail from Lake Worth Road to Melaleuca Lane during the fiscal year **1985-1986**. Palm Beach County will then let the contract for construction of this section of Military Trail during the fiscal year **1986-1987**. This property owner shall not be eligible to apply for a building permit until the contract for the above mentioned construction is let.

24. For cross access points to adjoining out-parcels, the developer shall execute a cross access easement prior to site plan review."

F. LANDSCAPE WITHIN MEDIAN

1. If permitted by the State Department of Transportation and County Engineering Department, the petitioner shall landscape the median of all abutting rights-of-way. This landscaping shall consist of: one ten (**10**) foot tall native canopy tree planted an average of thirty (**30**) feet on center, and appropriate ground cover and irrigation. All materials shall be selected, maintained and installed according to xeriscape principles. This landscaping shall be the perpetual maintenance obligation of the property owner and shall be installed prior to **June 1, 1992**.

G. MODIFICATION

1. Condition No. 2.a. of petition **85-61**, Resolution No. **R-85-1876J**, which states:

"2.a. Relocation of the Southwest entry in order to preserve the existing **25** foot Banyan tree, per County Engineers approval."

is hereby deleted.

2. Condition No. 2.f. of Petition No. **85-61**, Resolution No. **R-85-1876J**, which states:

"2.f. A six (**6**) foot chain link fence around the retention pond."

is hereby deleted.

3. Condition No. 5 of petition 85-61, Resolution No. F-85-1876J, which states:

"5. No stock loading or dumpster pickup will be permitted between the hours of 8:00 PM and 8:00 AM. Access to loading and dumpster area shall be such that the removal vehicle need not make unnecessary turning or backing movements."

is hereby amended to read as follows:

"5. No stock loading or dumpster pickup will be permitted between the hours of 9:00 P.M. and 7:00 A.M. Access to loading and dumpster areas shall be such that the removal vehicle need not make unnecessary turning or backing movements."

4. Condition No. 26 of petition 85-61, Resolution No. I-85-1876J, which states:

"26. The restaurants located at this site shall close to the public at 10:00 P.M."

is hereby amended to read as follows:

"26. Restaurants located within the northern block of retail space shall close to the public at 10:00 P.M."

H. RECYCLE SOLID WASTE

1. The property owner shall participate in a recycling program when available in the area. The program shall include paper, plastic, metal and glass products, as programs are available.

I. SIGN

1. Signs on the site shall be limited as follows:
- a. Signs on the site shall be limited to the frontage along Lake Worth Road.
 - b. Maximum sign number shall be three (3).
 - c. Total sign area shall be limited to a maximum of 300 square feet.
 - d. Maximum sign height shall be limited to ten (10) feet.
2. Prior to Site Plan Review Committee approval, a Master Sign Program shall be submitted, which specifies: sign location, sign size, and unified graphics and color.

J. SITE SPECIFIC

1. Prior to site plan certification, the site plan shall be amended to indicate the following:
- a. the location of dumpsters; and
 - b. required landscaping.

K. UNITY OF CONTROL

1. Prior to Site Plan certification, the property owner shall record a Unity of Control on the subject property, subject to approval by the County Attorney.

L. COMPLIANCE

1. As provided in the Palm Beach County Zoning Code, Sections 400.2 and 402.6, failure to comply with any of these conditions of approval at any time may result in:
 - a. The denial or revocation of a building permit; the issuance of a stop work order; the denial of a Certificate of Occupancy on any building or structure; or the denial or revocation of any permit or approval for any developer-owner, commercial-owner, lessee, or user of the subject property; and/or
 - b. The revocation of the Special Exception and any zoning which was approved concurrently with the Special Exception as well as any previously granted certifications of concurrency or exemptions therefrom; and/or
 - c. A requirement of the development to conform with updated standards of development, applicable at the time of the finding of non-compliance, or the addition or modification of conditions reasonably related to the failure to comply with existing conditions.
2. The Zoning Code Section 402.9 (Mandatory Review of Development Approval) review date established by the result of the previous approval for this property shall be extended to June 1, 1992.

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

Commissioner Roberts moved for approval of the Resolution.

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

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

The Chair thereupon declared the resolution was duly passed and adopted this 20th day of August, 1991.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

BY: 
COUNTY ATTORNEY

JOHN B. DUNKLE, CLERK
BY: 
DEPUTY CLERK