

RESOLUTION NO. R-93- 516

RESOLUTION APPROVING ZONING PETITION NO. 92-7
SPECIAL EXCEPTION PETITION OF SHIRLEY K. BERNSTEIN AND
ANN K. SCHULMAN

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. 92-7 was presented to the Board of County Commissioners of Palm Beach County, sitting as the Zoning Authority, at its Public Hearing conducted on September 24, 1992; 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. 92-7, the petition of SHIRLEY K. BERNSTEIN AND ANN K. SCHULMAN, BY DAVID L. CARPENTER, AGENT, for a SPECIAL EXCEPTION FOR A PLANNED GENERAL COMMERCIAL DEVELOPMENT, INCLUDING A FAST FOOD RESTAURANT WITH DRIVE-THRU WINDOW, AUTO SERVICE STATION (AUTOMATIC) AND FINANCIAL INSTITUTION WITH 3 DRIVE-UP TELLERS on a parcel of land lying in the Southwest 1/4 of the Southwest 1/4 of the Southeast 1/4 of Section 1, Township 45 South, Range 42 East. Less the Right-of-way of Military Trail and less the Right-of-way of Hypoluxo Road, and being located in the N.E. corner of Hypoluxo Rd. & Military Trail, in the CC Zoning District, was approved on September 24, 1992, as advertised, subject to the following conditions:

A. ALL PETITIONS

1. The petitioner shall submit an application to the Development Review Committee (DRC) on or before December 1, 1992, for the certification of the site plan approved

by the Board of County Commissioners on September 24, 1992, by Petition No. 92-7. The site plan shall be approved by the DRC on or before February 1, 1993. No administrative time extension to this condition shall be allowed.

B. BUILDING AND SITE DESIGN

1. Total gross floor area shall be limited to a maximum of **71,000** square feet. (BUILDING - Zoning)
2. The site shall be limited to two (2) out parcels. (ZONING/ENGINEERING)
3. The maximum height, from grade to roof line, for all structures shall not exceed Thirty five (35) feet. (BUILDING)
4. Architectural character and treatment which is compatible and harmonious with abutting development shall be provided on all sides of the building. (BUILDING)
5. All air conditioning and mechanical equipment shall be roof mounted and screened from view on all sides in a manner consistent with the color and character of the principle structure. (BUILDING)
6. Prior to issuance of any permit (inclusive of land development and building permits), the petitioner shall first complete the construction of the required perimeter wall along the east property line. (ZONING/BUILDING/ENGINEERING)

C. CONCURRENCY

1. The Certificate for Concurrency Reservation, Case Number 92-05-04-002-C, shall be revised prior to application for site plan certification by the Development Review Committee in order to reflect the square footage proposed by this petition. (PLANNING)

D. DUMPSTER

1. All areas or receptacles for the storage and disposal of trash, garbage or vegetation, such as dumpsters and trash compactors, shall not be located within twenty five (25) feet any property line; shall be confined to areas designated on the site plan and shall be screened by a solid opaque enclosure. The open end of the enclosure shall have an obscuring, opaque gate. (BUILDING)
2. All exterior sides of such enclosures, except the open end, shall be landscaped with thirty (30) inch high shrub and hedge material planted twenty-four (24) inches on center at installation. Alternative landscaping may be permitted which is acceptable to the Zoning Division, This provision shall not apply to litter containers provided for the convenience of pedestrians. (BUILDING/ZONING)

E. ENGINEERING

1. 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 onsite the stormwater runoff generated by a three (3) year-one (1) hour storm with a total rainfall of 3 inches 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 (ENGINEERING).

2. The Developer shall design the drainage system such that drainage from those areas which may contain hazardous or undesirable waste shall be separate from stormwater runoff from the remainder of the site (ENGINEERING).
3. Prior to **February 1, 1993** or prior to the issuance of the first Building Permit, whichever shall first occur, the property owner shall convey to Palm Beach County **Land Development Division** by road right-of-way warranty deed a forty (40) foot Safe Sight Corner.

The right-of-way conveyance shall be free and clear of all encumbrances and encroachments. Property owner shall provide Palm Beach County with sufficient documentation acceptable to the Right-of-way Acquisition Section to ensure that the property is free of all encumbrances and encroachments. (MONITORING/BUILDING - Engineering).

4. Prior to **February 1, 1993** or prior to the issuance of the first Building Permit, whichever shall first occur, the property owner shall convey to Palm Beach County **Land Development Division** by road right-of-way warranty deed twelve (12) feet of right-of-way to permit the construction of a right turn lane, east approach on Hypoluxo Road at Military Trail. The length of this road right-of-way conveyance shall be a minimum of 400 feet, plus the appropriate tapers.

The right-of-way conveyance shall be free and clear of all encumbrances and encroachments. Property owner shall provide Palm Beach County with sufficient documentation acceptable to the Right-of-way Acquisition Section to ensure that the property is free of all encumbrances and encroachments. (MONITORING/BUILDING - Engineering)

5. 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. The Fair Share Fee for this project presently is \$326,150. (5,930 trips X \$55. per trip) and is paid at the time of the Building Permit (IMPACT FEE COORDINATOR).

6. Prior to Development Review Committee Certification, the Site Plan shall be amended to reflect only 2 access points onto Military Trail, the location of the which shall be subject to the approval of the County Engineer. (ENGINEERING)

F. ENVIRONMENTAL RESOURCES MANAGEMENT

1. Secondary containment for stored Regulated Substances- fuels, oils, solvents, or other hazardous chemicals is required. Department of Environmental Resources Management staff are willing to provide guidance on appropriate protective measures. (BUILDING-ERM)
2. Plans for any underground storage tanks must be approved by the Department of Environmental Resources Management prior to installation. The petitioner shall perform all necessary preventative measures to reduce the chances of contamination of the groundwater. Double walled tanks and piping with corrosion protection or their equivalent shall be a part of those measures. (BUILDING-ERM)
3. A on-site 1.06 acre preserve area shall be established in the northeastern quadrant of the property, labeled on the site plan and identified on a certified metes and bounds survey by a registered land surveyor. Preserve areas shall be preserved with intact canopy, understory and ground cover and maintained without surface alteration or infringement by drainage or utility easements. Preserve areas shall be identified on any plat required for development. A management plan that addresses the maintenance of the preserve area including the continued removal of invasive exotic species shall be submitted to the Department of Environmental Resources Management concurrent with the application to the Development Review Committee and approved by the Department prior to site plan certification. (ERM)

G. 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. (HEALTH)
2. Sewer service is available to the property. Therefore, no septic tank shall be permitted on the site. (HEALTH)
3. Water service is available to the property. Therefore, no well shall be permitted on the site to provide potable water. (HEALTH)

H. IRRIGATION QUALITY WATER

1. When irrigation quality water is available within 500 feet of the property, the petitioner shall connect to the system subject to permitting and/or requirements of the Florida Department of Environmental Regulations and/or the South Florida Water Management District. The cost for connection shall be borne by the property owner. (UTILITIES)

I. LANDSCAPING - GENERAL

1. Prior to site plan certification, the petitioner shall revise the landscape tabular data on the site plan to reflect conformance to minimum Landscape Code requirements and all landscape/vegetation preservation conditions of approval. (ZONING)
2. All trees required to be planted on site by this approval shall meet the following minimum standards at installation:
 - a. Tree height: fourteen (14) feet.
 - b. Trunk diameter: 3.5 inches measured 4.5 feet above grade.
 - c. Canopy diameter: seven (7) feet. Diameter shall be determined by the average canopy radius at 3 points measured from the trunk to the outermost branch tip. Each radius shall measure at least 3.5 feet in length. (ZONING)

J. LANDSCAPING - INTERIOR

1. One landscape island shall be provided for every ten (10) parking spaces. The maximum spacing between landscape islands shall not exceed one hundred (100) linear feet. (ZONING)
2. Landscaped divider medians shall be provided between all abutting rows of parking spaces. The minimum width of this median shall be ten (10) feet. One native canopy tree or native palm tree and appropriate ground cover shall be planted for each thirty (30) linear feet of the divider median, with a maximum tree spacing of sixty (60) feet on center. (ZONING)
3. Landscaped divider medians with at grade pedestrian/bicycle cuts shall be provided in the center of all driveways providing ingress and egress to the site. The minimum width of this median shall be six (6) feet. A minimum width of five (5) feet of landscaped area shall be provided. One native canopy tree or native palm tree and appropriate ground cover shall be planted for each twenty (20) linear feet of the divider median. (ZONING)
4. Prior to site plan certification, the site plan shall be amended to indicate typical landscape island and divider median planting details, subject to approval by the Zoning Division. (ZONING)

K. LANDSCAPING ALONG WEST AND SOUTH PROPERTY LINES (ABUTTING RIGHTS-OF-WAY)

1. Landscaping within the required buffer along west and south property shall be upgraded to include:
 - a. One (1) native canopy tree planted every twenty (20) feet on center.
 - b. One (1) native palm tree for each thirty (30) linear feet of frontage. A group of three or more palm trees may supersede the requirement for a native canopy tree in that location.

- c. Thirty (30) inch high shrub or hedge material spaced twenty-four (24) inches on center at installation. (ZONING)

L. LANDSCAPING ALONG NORTH AND EAST PROPERTY LINES

- 1. Landscaping and buffering along the north and east property lines shall be upgraded to include:
 - a. A minimum ten (10) foot wide landscape buffer strip.
 - b. A six (6) foot high opaque concrete wall. The exterior side of the wall shall be given a finished architectural treatment which is compatible and harmonious with abutting development. (ZONING)
- 2. Along the interior side of the required wall, except within the preservation area, the property owner shall install twenty-four (24) inch high shrub or hedge material spaced no more than twenty four (24) inches on center, to be maintained at a minimum height of thirty-six (36) inches. (ZONING)

M. LANDSCAPE WITHIN MEDIAN

- 1. Prior to site plan certification, the petitioner shall apply to the Palm Beach County Engineering and Public Works Department for a permit to landscape all adjacent median(s) of all abutting rights-of-way. When permitted by Palm Beach County Department of Engineering and Public Works, landscaping shall consist of a minimum of one (1) fourteen (14) foot tall native tree for each thirty (30) linear feet of the adjacent median to be planted and appropriate ground cover. Trees may be planted singularly or in clusters. All landscaping and maintenance shall be subject to the standards as set forth by the Palm Beach County Engineering and Public Works Department. All landscape material shall be selected from the following list:

<u>Trees:</u>	<u>Ground cover:</u>
Laurel Oak	Wedilia
Live Oak	Bahia Grass
Slash Pine	
Sabal Palmetto	

Alternative species may be allowed subject to approval by the County Engineer. All plant material shall be installed and selected according to xeriscape principles and shall conform with the following:

- a) All plants shall be container grown or field collected and transplanted from the project site.
- b) All plantings shall be done in accordance with detailed planting plans and specifications to be submitted and approved by the County Engineer concurrent with Site Plan certification.

All required median landscaping, including watering, shall be the perpetual maintenance obligation of the petitioner and its successors, legal heirs or assignees or duly established Property Owner's Association and/or

Homeowners' Association, and shall be installed on or before issuance of the first Certificate of occupancy or filing of the first plat, whichever occurs first. Declaration of Covenants and Restriction Documents shall be established or amended as required, prior to receiving the first building permit or filing of the first plat, whichever occurs first, to reflect this obligation. Maintenance shall be in accordance with the issued permits. (BUILDING/ENGINEERING - County Attorney)

N. LIGHTING

1. All outdoor lighting used to illuminate the premises and identification signs shall be of low intensity, shielded and directed down and away from adjacent properties and streets. (CODE ENFORCEMENT)
2. All lighting fixtures shall not exceed fifteen (15) feet in height. (BUILDING)
3. All outdoor lighting shall be extinguished no later than 11:00 p.m. Security lighting only is excluded from this requirement. (CODE ENFORCEMENT)
4. No light fixtures shall be permitted within fifty (50) feet of the north and east property lines. (BUILDING/ZONING)

O. PARKING

1. A maximum of 380 parking spaces shall be permitted on-site. (BUILDING)
2. All delivery and/or loading areas shall be screened from view by a twelve (12) foot high wing wall consistent with the color and character of the principle structure. (BUILDING)
3. Overnight storage or parking of delivery vehicles or trucks shall not be permitted on site, except within the loading and delivery areas designated on the site plan. (BUILDING/Code Enforcement)
4. Prior to site plan certification, the site plan shall be amended to reflect the location of shopping cart storage and retrieval areas within all parking areas. (ZONING)

P. RECYCLE SOLID WASTE

1. All property owners and lessee's shall participate in a recycling program when available in the area. Material to be recycled shall include, but not be limited to, paper, plastic, metal and glass products. (SWA)

Q. SIGNS

1. Point of purchase signs fronting on Military Trail shall be limited as follows:
 - a. Maximum sign height, measured from finished grade - ten (10) feet;
 - b. Maximum sign face area per side - 100 square feet;
 - c. Maximum number of signs - one (1). (BUILDING)

2. Point of purchase signs fronting on Hypoluxo Road shall be limited as follows:
 - a. Maximum sign height, measured from finished grade - ten (10) feet;
 - b. Maximum sign face area per side - 100 square feet;
 - c. Maximum number of signs - one (1). (BUILDING)
3. No signs shall encroach into the vegetation preservation areas. (BUILDING/Zoning/ERM)

R. USE LIMITATION

1. Use of the site shall be limited to one (1) 3500 square feet maximum fast food restaurant with a drive-through, and a maximum of 71,000 square feet of retail area which includes a financial institution with three drive-through lanes. (BUILDING/CODE ENFORCEMENT - Zoning)
2. No outdoor loudspeaker system audible off site shall be permitted. (CODE ENFORCEMENT)
3. No outdoor storage or placement of any material, refuse, equipment or debris shall be permitted on site. (CODE ENFORCEMENT)
4. Hours of operation on Saturday and Sundays are limited to the hours of 7:00 a.m. to 11:00 p.m. (CODE ENFORCEMENT)
5. Prior to site plan certification, the auto service station use shall be deleted from the site plan. (ZONING)

S. VEGETATION PRESERVATION - GENERAL

1. No structures or utilities shall be located within the preserve area. (ZONING)
2. No native vegetation shall be removed from the preserve area. (ZONING)
3. All vegetation preservation areas over 1,000 square feet in area shall be described in metes and bounds descriptions and recorded in the public record/platted. (ZONING)
4. The petitioner shall reconfigure the parking area or eliminate all excess parking spaces/impervious surface area to allow for the preservation of existing vegetation on site. (ZONING)
5. Terminal islands, divider medians, and landscape islands shall incorporate existing native vegetation to the extent determined by the Zoning Division. Adjustments to the location of landscape islands may occur as the result of acceptance of a Landscape Betterment Plan by the Zoning Division. (ZONING)
6. Native vegetation not located within preservation/relocation areas and deemed relocatable by the Department of Environmental Resource Management and the Zoning Division, shall be relocated to perimeter buffers or other open space areas on site. (ERM/Zoning)

T. VEGETATION REMOVAL

1. Prior to site plan certification by the Development Review Committee, the petitioner shall submit to the Zoning Division for approval a tree survey drawn at the same scale as the submitted site plan. This tree survey shall number, size and identify all native trees; and palms four (4) inches in diameter and greater in a tabular form. (ZONING)
2. Prior to site plan certification by the Development Review Committee, the petitioner shall submit to the Zoning Division for approval a Landscape Betterment Plan which corresponds to the required tree survey. This Plan shall demonstrate the incorporation of native vegetation into the site design. At a minimum, this plan shall specify:
 - a. The preservation or relocation of all oak trees. The removal of an oak tree shall only be allowed upon demonstration to the Zoning Division that preservation or relocation is not feasible.
 - b. The preservation or relocation within all buffer areas of healthy native plant material as determined by the Zoning Division to meet the landscaping requirements. (ZONING)
3. Prior to issuance of a Vegetation Removal Permit, the property owner shall complete the following:
 - a. All trees to be relocated, preserved, or removed shall be identified in the field, tagged and numbered according to a tree survey.
 - b. Trees to be preserved shall receive appropriate protection during site development. No clearing shall commence until all protection devices are installed by the petitioner, and inspected and approved by the Zoning Division.
 - c. No vegetation removal or development activity such as trenching, grade changes or grubbing that may cause injury to the vegetation shall be permitted in required buffer areas or preservation areas;.
 - d. Tree relocation shall occur prior to construction activity except as approved by the Zoning Division upon submission of a development phasing plan.
 - e. All tree relocation shall be completed prior to issuance of a building permit for any structure on the site, except as approved by the Zoning Division. (ZONING)
4. Prior to removal of any vegetation on site, the petitioner shall schedule a Preclearing Inspection with the Zoning Division. All transplantable native vegetation shall be identified. Native vegetation identified to be transplanted shall be relocated to perimeter buffer areas or other open space areas on site. (ZONING)
5. In conjunction with submittal of the site plan to the Development Review Committee, the petitioner shall submit a complete application for a Vegetation Removal Permit to the Zoning Division which details methods of preservation. These methods shall be approved by the Zoning Division and be in place prior to final issuance of the Vegetation Removal Permit. (ZONING)
6. All prohibited species shall be removed from the subject

property prior to the issuance of a Certificate of Occupancy (C.O.). (ZONING - Building)

- 7. No removal of native plant material shall be permitted on the site until the site plan has been certified by the Development Review Committee. (ZONING - Building)

U. 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. (MONITORING)
2. 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. (MONITORING)

Commissioner Marcus moved for approval of the Resolution.

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

Mary McCarty, Chair -- Aye
Ken Foster -- Aye
Burt Aaronson -- Aye
Maude Ford Lee -- Aye
Karen T. Marcus -- Aye
Warren H. Newell -- Aye
Carol A. Roberts -- Absent

The Chair thereupon declared the resolution was duly passed and adopted this 20 day of April, 1993.

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA BY ITS BOARD OF COUNTY COMMISSIONERS

BY: [Signature] COUNTY ATTORNEY

BY: [Signature] DEPUTY CLERK

