

RESOLUTION NO. R-2007-2141

RESOLUTION APPROVING ZONING APPLICATION DOA2007-886
(CONTROL NUMBER 1974-104)
DEVELOPMENT ORDER AMENDMENT
APPLICATION OF MS WOOLBRIGHT BOCA GROVE, LLC
BY MILLER LAND PLANNING CONSULTANTS, INC., AGENT
(SHOPS AT BOCA GROVE)

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

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

WHEREAS, Zoning Application DOA2007-886 was presented to the Board of County Commissioners at a public hearing conducted on November 29, 2007; and

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

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

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

1. This Development Order Amendment is consistent with the purposes, goals, objectives and policies of the Palm Beach County Comprehensive Plan, including standards for building and structural intensities and densities, and intensities of use.
2. This Development Order Amendment complies with relevant and appropriate portions of Article 4.B (Supplementary Use Standards) of the Palm Beach County Unified Land Development Code. This Development Order Amendment also meets applicable local land development regulations.
3. This Development Order Amendment, with conditions as adopted, is compatible as defined in the Palm Beach County Unified Land Development Code and generally consistent with the uses and character of the land surrounding and in the vicinity of the land proposed for development.
4. The proposed design, with conditions as adopted, minimizes adverse effects, including visual impact and intensity of the proposed use on adjacent lands.
5. This Development Order Amendment has a concurrency determination and complies with Article 2.F (Concurrency - Adequate Public Facility Standards) of the ULDC.
6. This Development Order Amendment, with conditions as adopted, minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands and the natural functioning of the environment.

7. This Development Order Amendment, with conditions as adopted, will result in logical, timely and orderly development patterns.
8. This Development Order Amendment, with conditions as adopted, complies with standards imposed on it by all other applicable provisions of the Palm Beach County Unified Land Development Code for use, layout, function, and general development characteristics.
9. This Development Order Amendment, with conditions as adopted, is consistent with applicable Neighborhood Plans.
10. The applicant has demonstrated sufficient justification that there are changed circumstances, which would require the Development Order Amendment.

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that Zoning Application DOA2007-886, the application of MS Woolbright Boca Grove, LLC, by Miller Land Planning Consultants, Inc., agent, for a Development Order Amendment to reconfigure site plan and add square footage on a parcel of land legally described in EXHIBIT A, attached hereto and made a part hereof, and generally located as shown on a vicinity sketch attached as EXHIBIT B, attached hereto and made a part hereof, was approved on November 29, 2007, subject to the conditions of approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner McCarty moved for the approval of the Resolution.

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

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

The Chairperson thereupon declared that the resolution was duly passed and adopted on November 29, 2007.

Filed with the Clerk of the Board of County Commissioners on December 11, 2007

This resolution is effective when filed with the Clerk of the Board of County Commissioners.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

SHARON BOCK, CLERK &
COMPTROLLER

BY: 
COUNTY ATTORNEY

BY: 
DEPUTY CLERK



EXHIBIT A

LEGAL DESCRIPTION

(DEED)

A PARCEL OF LAND LOCATED IN SECTION 22, TOWNSHIP 47 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE WESTERLY 129.31 FEET OF THE SOUTHERLY 427.71 FEET OF THE NORTHERLY 1277.79 FEET OF THE NORTHWEST 1/4 AS DESCRIBED IN OFFICIAL RECORDS BOOK 2736, PAGE 903, AND THAT PART OF THE NORTHWEST 1/4 LYING WESTERLY OF JOG ROAD, AS DESCRIBED IN OFFICIAL RECORDS BOOK 2596, PAGE 266; SAID PARCEL BEING FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 22; THENCE SOUTH 00°10'25" WEST, ALONG THE WEST LINE OF SAID SECTION 22, A DISTANCE OF 850.08 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUE SOUTH 00°10'25" WEST, ALONG THE LAST DESCRIBED LINE, 427.91 FEET TO AN INTERSECTION WITH THE NORTHERLY RIGHT-OF-WAY LINE OF SUNSTREAM BOULEVARD; THENCE ALONG SAID RIGHT-OF-WAY LINE OF SUNSTREAM BOULEVARD NORTH 89°37'45" EAST, 36.19 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG SAID RIGHT-OF-WAY LINE, AND ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 386.54 FEET, AN ARC DISTANCE OF 217.31 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE, SOUTH 58°09'38" EAST ALONG SAID RIGHT-OF-WAY LINE OF SUNSTREAM BOULEVARD, 173.95 FEET; THENCE NORTH 77°38'11" EAST ALONG SAID RIGHT-OF-WAY LINE OF SUNBEAM BOULEVARD, 34.86 FEET TO A POINT LOCATED ON THE ARC OF A CIRCULAR CURVE TO THE RIGHT AND WHOSE RADIUS POINT BEARS SOUTH 56°34'03" EAST FROM THE LAST DESCRIBED POINT: SAID POINT BEING FURTHER DESCRIBED AS BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF JOG ROAD; THENCE NORTHERLY AND EASTERLY ALONG SAID RIGHT-OF-WAY LINE OF JOG ROAD AND ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 2313.88 FEET, AN ARC DISTANCE OF 538.97 FEET; THENCE, NORTH 76°06'00" WEST, 659.56 FEET; THENCE NORTH 89°49'35" WEST, 129.31 FEET THE POINT OF BEGINNING.

SAID LANDS SITUATE, LYING AND BEING IN PALM BEACH COUNTY, FLORIDA.

CORRECTIVE LEGAL DESCRIPTION:

A PARCEL OF LAND SITUATE IN SECTION 22, TOWNSHIP 47 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER SECTION 22, TOWNSHIP 47 SOUTH, RANGE 42 EAST, THENCE ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 22 SOUTH 00°12'33" EAST, A DISTANCE OF 850.44 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 22 SOUTH 00°12'33" EAST, A DISTANCE OF 426.58 FEET TO THE NORTH RIGHT OF WAY LINE OF SUNSTREAM BOULEVARD AS LAID OUT AND IN USE AND AS DEDICATED PER THE PLAT OF "BOCA GROVE" AS RECORDED IN PLAT BOOK 32, PAGES 12 AND 13 AND THE PLAT OF "BOCA GROVE ADDITION" AS RECORDED IN PLAT BOOK 39, PAGE 194, BOTH OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THE ALONG THE NORTH RIGHT OF WAY LINE OF SAID SUNSTREAM BOULEVARD NORTH 89°10'22" EAST, A DISTANCE OF 36.19 FEET TO A POINT OF CURVATURE WITH A CURVE CONCAVE THE SOUTH, SAID CURVE HAVING A RADIUS OF 386.54 FEET AND A CENTRAL ANGLE OF 32°12'39"; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 217.31 FEET; THENCE CONTINUE ALONG THE SAID NORTH RIGHT

OF WAY LINE SOUTH 58°36'59" EAST, A DISTANCE OF 175.48 FEET; THENCE CONTINUE ALONG SAID NORTH RIGHT OF WAY LINE NORTH 77°11'50" EAST, A DISTANCE OF 34.85 FEET TO A POINT ON A NON TANGENT CURVE CONCAVE TO THE SOUTHEAST, SAID CURVE HAVING A RADIUS OF 2313.88 FEET AND A CENTRAL ANGLE OF 13°19'25", AND FROM WHICH A RADIAL LINE BEARS SOUTH 56°59'20" EAST, SAID POINT ALSO BEING ON THE WESTERLY RIGHT OF WAY LINE OF JOG ROAD AS LAID OUT AND IN USE AND AS DEDICATED PER OFFICIAL RECORDS BOOK 1799, PAGE 1422 AND OFFICIAL RECORDS BOOK 3520, PAGE 10, BOTH OF THE AFOREMENTIONED PUBLIC RECORDS, THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 538.07 FEET TO THE SOUTHEAST CORNER OF TRACT "A", ESTANCIA III OF VIA VERDE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 32, PAGES 105 AND 106 OF THE AFOREMENTIONED PUBLIC RECORDS; THENCE ALONG THE SOUTH LINE OF SAID TRACT "A" NORTH 76°32'38" WEST, A DISTANCE OF 659.56 FEET THE SOUTHWEST CORNER OF SAID TRACT "A"; THENCE SOUTH 89°47'27" WEST, A DISTANCE OF 129.69 FEET TO THE POINT OF BEGINNING.

EXHIBIT B
VICINITY SKETCH

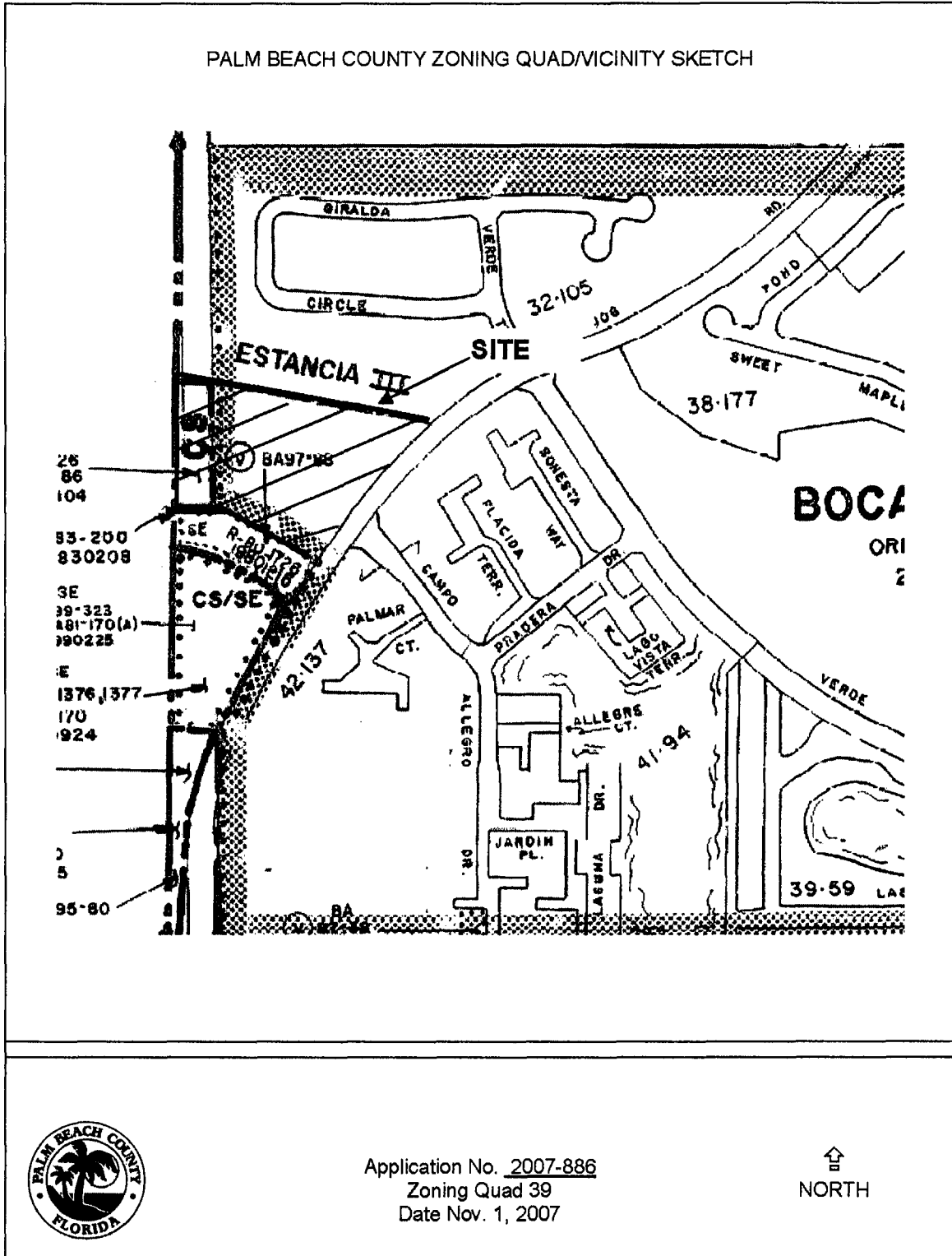


EXHIBIT C

CONDITIONS OF APPROVAL COMMERCIAL POD 8, VIA VERDE PUD

ALL PETITIONS

1. Development of Commercial Pod 8 of the Via Verde PUD is limited to the uses and site design approved by the Board of County Commissioners. The approved preliminary site plan of the Commercial Pod 8 is dated September 17, 2007. All modifications must be approved by the Board of County Commissioners unless the proposed changes are required to meet conditions of approval or are in accordance with the ULDC. (DRO: ZONING - Zoning)

ARCHITECTURAL REVIEW – FREESTANDING TYPE I RESTAURANT

1. At time of submittal for final Development Review Officer (DRO) approval, the architecture elevations for the freestanding Type I Restaurant shall be submitted simultaneously with the site plan for final architectural review and approval. Elevations shall be designed to be consistent with Article 5.C of the ULDC. Development shall be consistent with the approved architectural elevations, the DRO approved site plan, all applicable conditions of approval, and all ULDC requirements. (DRO: ARCH REVIEW - Zoning)
2. The exterior elevations of the freestanding Type I Restaurant shall integrate the gutters and downspouts into the architectural design of the building. Painting of the gutters shall not constitute integration. (DRO: ARCH REVIEW - Zoning)

DUMPSTERS

1. Prior to the final approval by the Development Review Officer (DRO) for the freestanding Type I Restaurant, the existing dumpsters shall be located on the final site plan and shall be enclosed in accordance with Article 5.B.1.A.8.e. (DRO: ZONING - Zoning)

ENGINEERING

1. In order to comply with the mandatory Traffic Performance Standards, the Property owner shall be restricted to the following phasing schedule: No Building Permits for the site may be issued after January 1, 2011. A time extension for this condition may be approved by the County Engineer based upon an approved Traffic Study which complies with Mandatory Traffic Performance Standards in place at the time of the request. This extension request shall be made pursuant to the requirements of Article 2, Section E of the Unified Land Development Code. (DATE: MONITORING-Eng)
2. The Property owner shall extend the existing right turn lane north approach on Jog Road at the project's south entrance approximately 148 feet to provide for a minimum turn lane length of 170 feet plus a 50 foot paved taper.
 - a. This construction shall be concurrent with the paving and drainage improvements for the site. Any and all costs associated with the construction shall be paid by the property owner. These costs shall include, but are not limited to, utility relocations and acquisition of any additional required right-of-way.
 - b. Permits required by the Florida Department of Transportation for this construction shall be obtained prior to the issuance of the building permit for the freestanding Type I Restaurant. (BLDG PERMIT: MONITORING-Eng)

- c. Construction shall be completed prior to the issuance of the Certificate of Occupancy for the freestanding Type I Restaurant. (CO: MONITORING-Eng)

3. Landscape Within the Median of Powerline (Jog) Road

- a. The Property Owner shall design, install and perpetually maintain the median landscaping within the median of all abutting right of way of Jog Road. This landscaping and irrigation shall strictly conform to the specifications and standards for the County's Only Trees, Irrigation, and Sod (OTIS) program. Additional landscaping beyond OTIS requires Board of County Commissioners approval. Median landscaping installed by Property Owner shall be perpetually maintained by the Property Owner, his successors and assigns, without recourse to Palm Beach County, unless the Property Owner provides payment for maintenance as set forth in Paragraph D below. (ONGOING: CODE ENF - Eng)
- b. The necessary permit(s) for this landscaping and irrigation shall be applied for prior to the issuance of the building permit for the freestanding Type I Restaurant. (BLDG PERMIT: MONITORING-Eng)
- c. All installation of the landscaping and irrigation shall be completed prior to the issuance of the certificate of occupancy for the freestanding Type I Restaurant. (CO: MONITORING -Eng)
- d. At Property Owner's option, when and if the County is ready to install OTIS on the surrounding medians of this roadway adjacent to the Property Owner installed landscaping, payment for the maintenance may be provided to the County. The payment shall be in the amount and manner that complies with the schedule for such payments that exists on the date payment is made. Once payment has been provided, Palm Beach County shall assume the maintenance responsibility for the OTIS landscaping and irrigation that has been installed by the Property Owner. The Property Owner shall first be required to correct any deficiencies in the landscaping and irrigation. This option is not available to medians with additional landscaping beyond OTIS standards, unless those medians are first brought into conformance with OTIS standards by the Property Owner. (ONGOING: ENG - Eng)
- e. Alternately, at the option of the Property Owner, and prior to the issuance of a Building Permit for the freestanding Type I Restaurant, the Property Owner may make a contribution to the County's Only Trees Irrigation and Sod, OTIS program, unincorporated thoroughfare beautification program. This payment, for the County's installation of landscaping and irrigation on qualifying thoroughfares shall be based on the project's front footage along Jog Road. This payment shall be in the amount and manner that complies with the schedule for such payments as it currently exists or as it may from time to time be amended. (ONGOING: ENG - Eng)

4. CORRIDOR CONVEYANCE OF RIGHT-OF-WAY

The property owner shall provide to the Palm Beach County Land Development Division a road right-of-way deed and all associated documents as required by the County Engineer for Powerline Road 63 feet from centerline. All right-of-way deed(s) and associated documents shall be provided and approved prior to July, 1 2008 or prior to the issuance of a Building Permit for the freestanding Type I Restaurant whichever shall first occur.

Right of way conveyance shall be along the entire frontage and shall be free of all encroachments and encumbrances. Property owner shall provide Palm Beach County with sufficient documentation acceptable to the Right of Way Acquisition Section to ensure that the property is free of all encumbrances and encroachments.

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

5. Prior to issuance of a building permit for the freestanding Type I Restaurant, the property owner shall provide a temporary roadway construction easement along Powerline Road to Palm Beach County. This roadway construction easement shall contain an isosceles trapezoid connecting the required corner clips across this property owners entrance road right of way. Construction within this easement shall conform to Palm Beach County Standards. The Property Owner shall not record these required easements or related documents. After final acceptance of the location, legal sketches and dedication documents, Palm Beach County shall record all appropriate deeds and documents. (BLDG PERMIT:MONITORING-Eng)
6. Prior to issuance of a Building Permit for the freestanding Type I Restaurant, the Property Owner shall plat the subject property into one legal lot of record in accordance with provisions of Article 11 of the Unified Land Development Code. (BLDG PERMIT: MONITORING-Eng)

PARKING

1. Prior to final approval by the Development Review Officer (DRO), the property owner shall record an amendment to the Amendment and Restatement of Unity of Title dated August 1, 2005 to reflect that the parking area provided on Parcel B supports the required parking for Parcel A. (DRO: ZONING – Zoning)

ZONING – LANDSCAPING

1. Prior to the issuance of a building permit for the freestanding Type I Restaurant, the property owner shall submit a Landscape Plan to the Landscape Section for review and approval. The Plan(s) shall be prepared in compliance with all landscape related conditions of approval as contained herein, and shall replace the previously approved September 18, 2006 plan. (BLDG PERMIT: LANDSCAPE - Zoning)
2. A minimum of fifty (50) percent of all trees to be planted in the landscape buffers in the affected area of the freestanding Type I Restaurant shall meet the following minimum standards at installation:
 - a. tree height: fourteen (14) feet;
 - b. trunk diameter: three and one-half (3.5) inches measured at four and one-half (4.5) feet above grade;
 - c. canopy diameter: seven (7) feet – diameter shall be determined by the average canopy radius measured at three (3) points from the trunk to the outermost branch tip. Each radius shall measure a minimum of three and one-half (3.5) feet in length; and,
 - d. credit may be given for existing or relocated trees provided they meet ULDC requirements. (BLDG PERMIT: LANDSCAPE – Zoning)

3. R-O-W BUFFER POWERLINE ROAD

In addition to code requirements, prior to the issuance of a building permit for the freestanding Type I Restaurant, the property owner shall also include a forty-eight (48) inch continuous hedge at the time of installation within the affected area along Powerline Road. (BLDG PERMIT: LANDSCAPE-Zoning)

USE LIMITATIONS – FREESTANDING TYPE I RESTAURANT

1. The freestanding Type I Restaurant shall be limited to a maximum of thirty (30) seats and shall have no drive thru facility. (ONGOING: ZONING - Zoning)
2. Storage or placement of any material, equipment or debris shall not be permitted in the rear of the freestanding Type I Restaurant. (ONGOING: CODE ENF - Zoning)

VARIANCE – FREESTANDING TYPE I RESTAURANT

1. Prior to the submittal for final approval by the Development Review Officer (DRO), the approved variance requests and any associated conditions of approval shall be reflected on the site plan. (DRO: ZONING – Zoning)

COMPLIANCE

1. In granting this approval, the Board of County Commissioners relied upon the oral and written representations of the petitioner both on the record and as part of the application process. Deviations from or violation of these representations shall cause the approval to be presented to the Board of County Commissioners for review under the compliance condition of this approval. (ONGOING: MONITORING - Zoning)
2. Failure to comply with any of the conditions of approval for the subject property at any time may result in:
 - a. The issuance of a stop work order; the issuance of a cease and desist order; the denial or revocation of a building permit; the denial or revocation of a Certificate of Occupancy; the denial of any other permit, license or approval to any developer, owner, lessee, or user of the subject property; the revocation of any other permit, license or approval from any developer, owner, lessee, or user of the subject property; revocation of any concurrency; and/or
 - b. The revocation of the Official Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or any other zoning approval; and/or
 - c. A requirement of the development to conform with the standards of the ULDC at the time of the finding of non-compliance, or the addition or modification of conditions reasonably related to the failure to comply with existing conditions; and/or
 - d. Referral to code enforcement; and/or
 - e. Imposition of entitlement density or intensity.

Staff may be directed by the Executive Director of PZ&B or the Code Enforcement Special Master to schedule a Status Report before the body which approved the Conditional Use, Type II Variance, Development Order Amendment, and/or other zoning approval, in accordance with the provisions of Section 2.E of the ULDC, in response to any flagrant violation and/or continued violation of any condition of approval.

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