

RESOLUTION NO. R-2008- 1356

RESOLUTION APPROVING ZONING APPLICATION CA2007-01801
(CONTROL NO. 2007-00407)
CLASS A CONDITIONAL USE
APPLICATION OF JOMAR FLORIDA ENTERPRISES, LLC
BY LAND DESIGN SOUTH, INC., AGENT
(1747 SOUTH MILITARY TRAIL)

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, is authorized and empowered to consider applications relating to zoning; and

WHEREAS, the Board of County Commissioners, pursuant to Article 2 (Development Review Process) of the Palm Beach County Unified Land Development Code (Ordinance 2003-067, as amended) is authorized and empowered to consider, approve, approve with conditions or deny Class A Conditional Uses; and

WHEREAS, the notice and hearing requirements, as provided for in Article 2 of the Palm Beach County Unified Land Development Code have been satisfied; and

WHEREAS, Zoning Application CA2007-01801 was presented to the Board of County Commissioners at a public hearing conducted on July 24, 2008; and

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

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

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

1. This Class A Conditional Use 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 Class A Conditional Use complies with relevant and appropriate portions of Article 4.B (Supplementary Use Standards) of the Palm Beach County Unified Land Development Code. This Class A Conditional Use also meets applicable local land development regulations. This Class A Conditional Use, 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.
3. This Class A Conditional Use, 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 Class A Conditional Use, 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.
6. This Class A Conditional Use, with conditions as adopted, will result in logical, timely and orderly development patterns.
7. This Class A Conditional Use, with conditions as adopted, is consistent with applicable Neighborhood Plans.
8. This Class A Conditional Use has a concurrency determination and complies with Article 2.F (Concurrency - Adequate Public Facility Standards) of the ULDC.
9. The applicant has demonstrated sufficient justification that there are changed circumstances, which would require the Class A Conditional Use.

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that Zoning Application CA2007-01801, the application of Jomar Florida Enterprises, LLC, by Land Design South, Inc., agent, for a Class A Conditional Use to allow Repair and Maintenance, General; Dispatching Office for four or more vehicles; and Restaurant, Type I in the General Commercial District, on a parcel of land legally described in EXHIBIT A, attached hereto and made a part hereof, and generally located as shown on a vicinity sketch as indicated in EXHIBIT B, attached hereto and made a part hereof, was approved on July 24, 2008, subject to the conditions of approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Marcus moved for the approval of the Resolution.

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

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

The Chairperson thereupon declared that the resolution was duly passed and adopted on July 24, 2008.

Filed with the Clerk of the Board of County Commissioners on July 29, 2008.

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

BY: 
COUNTY ATTORNEY

SHARON R. BOCK,
CLERK & COMPTROLLER

BY: 
DEPUTY CLERK



EXHIBIT A

LEGAL DESCRIPTION

Beginning at the Southeast corner of Tract 2, Block 3, Subdivision of Section 12, Township 44 South, Range 42 East, PALM BEACH PLANTATIONS, as recorded in Plat Book 10, Page 20, of Palm Beach County Public Records, which point is the intersection of the center line of Military Trail and Forest Hill Boulevard, thence Westerly along the South line of said Tract 2 and the center line of Forest Hill Boulevard a distance of 203.06 feet; thence Northerly and parallel to the center line of Military Trail a distance of 203.06 feet; thence Easterly and parallel to the center line of Forest Hill Boulevard a distance of 203.06 feet to the centerline of Military Trail; thence Southerly along the center line of Military Trail, a distance of 203.06 feet to the Point of Beginning, LESS the Right of Way of Military Trail over the Easterly 53.06 feet thereof and Less the Right of Way of Forest Hill Boulevard over the Southerly 53.06 feet thereof; and LESS the Right of Way to Palm Beach County, dated November 12, 1980 in Official Records Book 3402, Page 1137, Public Records of Palm Beach County, Florida.

LESS AND EXCEPT all that certain land situate in Palm Beach County, Florida to wit:

Being a parcel of land lying in Tract 2, Block 3, PALM BEACH PLANTATIONS, as recorded in Plat Book 10, Page 20, of the Public Records of Palm Beach County, Florida, and being more particularly described as follows:

Commencing at the intersection of the center line of Military Trail (S.R. 809) and Forest Hill Boulevard (Southeast corner of Tract 2, Block 3); thence North $01^{\circ}30'20''$ West (assumed bearing) along the centerline of said Military Trail (a 106' Right of Way) as recorded in Road Plat Book 3, Page 74, of the Public Records of said Palm Beach County, a distance of 203.07 feet; thence North $88^{\circ}46'02''$ West, a distance of 53.06 feet to a point of intersection with the West Right of Way line of said Military Trail, said point being the Point of Beginning of this description; thence South $01^{\circ}30'20''$ East along said West Right of Way line, a distance of 116.76 feet; thence South $44^{\circ}51'49''$ West, a distance of 36.20 feet to a point of intersection with the North Right of Way line of said Forest Hill Boulevard (a 120 foot Right of Way); thence North $88^{\circ}46'02''$ West along said North Right of Way line, a distance of 7.00 feet; thence North $44^{\circ}51'49''$ East, a distance of 36.20 feet; thence North $01^{\circ}30'20''$ West along a line that is 7.00 feet West of and parallel with the West Right of Way line of said Military Trail, a distance of 116.77 feet; thence South $88^{\circ}46'02''$ East, a distance of 7.01 feet to the Point of Beginning.

EXHIBIT B
VICINITY SKETCH

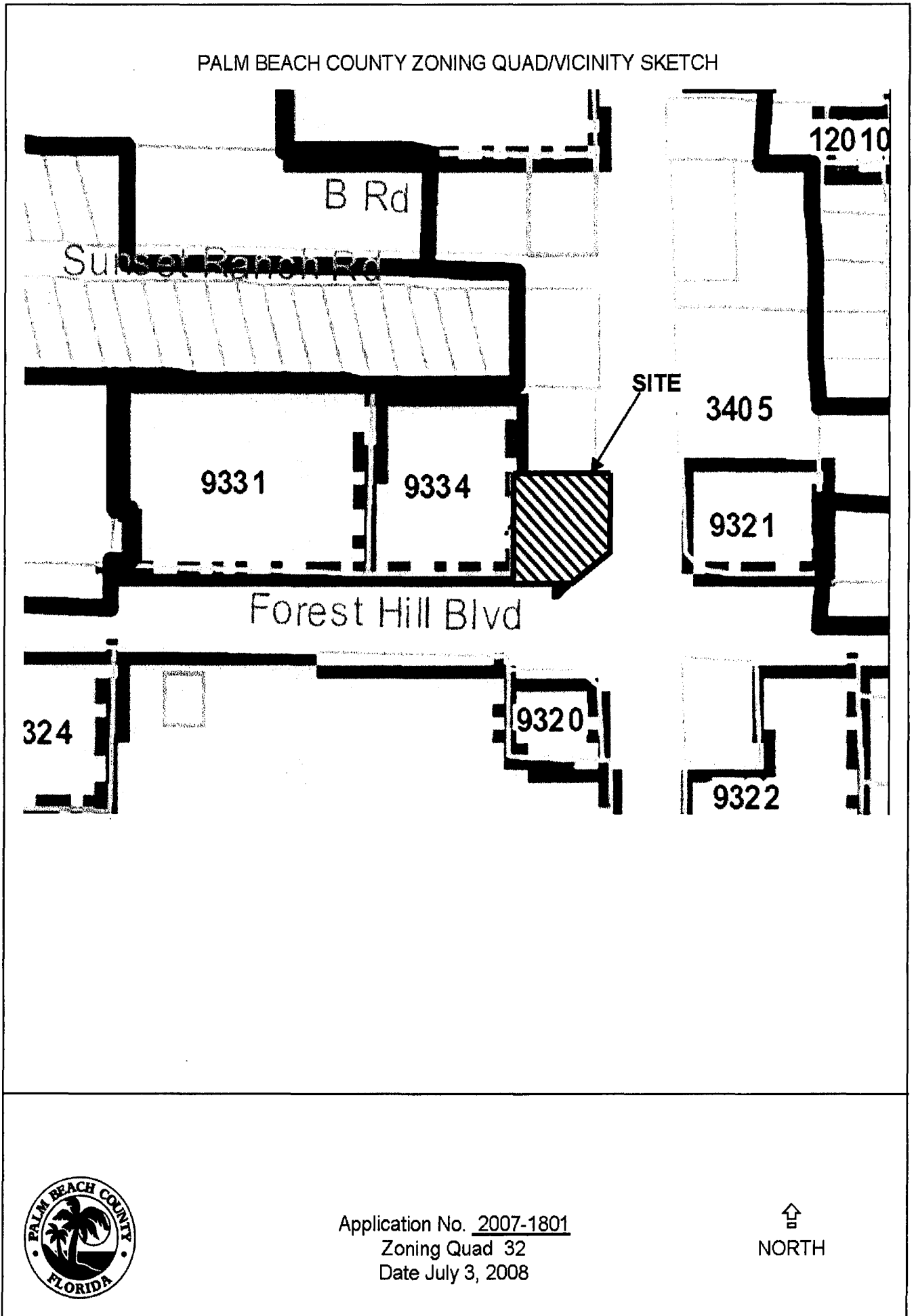


EXHIBIT C

CONDITIONS OF APPROVAL

ACCESS

1. Prior to final approval by the Development Review Officer (DRO), the property owner shall record a cross access agreement from the subject property to the property to the west in a form and manner that is acceptable to the County Attorney's office. (DRO: COUNTY ATTY - Zoning)

ALL PETITIONS

1. Development of the site is limited to the uses and site design approved by the Board of County Commissioners. The approved Preliminary Site plan is dated May 19, 2008. All modifications must be approved by the Board of County Commissioners unless the proposed changes are required to meet conditions of approval or are in accordance with the ULDC. (ONGOING: ZONING - Zoning)

ARCHITECTURAL REVIEW

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

ENGINEERING

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

A) No Building Permits for the site may be issued after July 24, 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. CORRIDOR CONVEYANCE OF ROAD RIGHT OF WAY - Military Trail

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 Military Trail an additional 12.5 feet along the Military Trail property frontage. All right of way deed(s) and associated documents shall be provided and approved prior to January 1, 2009 or prior to the issuance of a Building Permit whichever shall first occur.

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

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

ZONING - LANDSCAPING-LANDSCAPE PLAN

1. Prior to the issuance of a Building Permit, the property owner shall submit a Landscape Plan and/or an Alternative Landscape Plan to the Landscape Section for review and approval. The Plan(s) shall be prepared in accordance with the Preliminary Landscape Plan reviewed by the Board of County Commissioners for the Type I Restaurant location criteria exception and shall also include:

- a) All existing oak trees preserved into the landscape design,
- b) Ariel Easement and FPL planting guide note(s),
- c) Consistency with the Final Site Plan including but not limited to the Handicap access walk and future Military Trail Utility Easement (UE) width, and
- d) A 6-foot high continuous solid opaque visual screen consisting of landscape material (no wall) in the Military Trail ROW buffer east of the two bay doors, exclusive of the corner clip area and handicap access walk. (DRO: LANDSCAPE - Landscape)

SIGNS

1. Freestanding signs fronting on Military Trail and Forest Hill Boulevard shall be limited as follows:

- a. maximum sign height, measured from finished grade to highest point - fifteen (15) feet;
- b. maximum sign face area per side - one hundred fifty (150) square feet;
- c. maximum number of signs - one (1) per frontage;
- d. style - monument style only;
- e. location - as shown on the final site plan; and,
- f. signs shall be limited to identification of tenants only. (BLDG PERMIT: BLDG - Zoning)

USE LIMITATIONS-TYPE I RESTAURANT

1. The Type I Restaurant shall have no seats. (ONGOING: CODE ENF. - Zoning)

USE LIMITATIONS

2. Outdoor Storage or placement of any material, refuse, equipment or debris and Outdoor Display shall not be permitted on the property. (ONGOING: CODE ENF - Zoning)

COMPLIANCE

1. In granting this approval, the Board of County Commissioners relied upon the oral and written representations of the petitioner both on the record and as part of the application process. Deviations from or violation of these representations shall cause the approval to be presented to the Board of County Commissioners for review under the compliance condition of this approval. (ONGOING: MONITORING - Zoning)

2. Failure to comply with any of the conditions of approval for the subject property at any time may result in:

- a. The issuance of a stop work order; the issuance of a cease and desist order; the denial or revocation of a building permit; the denial or revocation of a Certificate of Occupancy; the denial of any other permit, license or approval to any developer, owner, lessee, or user of the subject property; the revocation of any other permit, license or approval from any developer, owner, lessee, or user of the subject property; revocation of any concurrency; and/or
- b. The revocation of the Official Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or any other zoning approval; and/or

- c. A requirement of the development to conform with the standards of the ULDC at the time of the finding of non-compliance, or the addition or modification of conditions reasonably related to the failure to comply with existing conditions; and/or
- d. Referral to code enforcement; and/or
- e. Imposition of entitlement density or intensity.

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

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