

RESOLUTION NO. R-2008-1960

RESOLUTION APPROVING ZONING APPLICATION PDD-2008-00449
(CONTROL NO. 2008-00052)
OFFICIAL ZONING MAP AMENDMENT
TO A PLANNED DEVELOPMENT DISTRICT (PDD)
APPLICATION OF W & W XXIII LLC
BY COTLEUR & HEARING, INC., AGENT
(HARVEST GALLERIA MUPD)

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 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 PDD-2008-00449 was presented to the Board of County Commissioners at a public hearing conducted on October 23, 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 official zoning map amendment (rezoning) is consistent with the Palm Beach County Comprehensive Plan.
2. This official zoning map amendment (rezoning) is consistent with the stated purpose and intent and requirements of the Palm Beach County Unified Land Development Code. The rezoning request is also consistent with the requirements of all other applicable local land development regulations.
3. This official zoning map amendment (rezoning) is compatible and generally consistent with existing uses and zones surrounding the subject land, and is the appropriate zoning district for the land.
4. This official zoning map amendment (rezoning) does not result in significantly adverse impacts on the natural environment, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.
5. This official zoning map amendment (rezoning) will result in a logical, orderly and timely development pattern.
6. This official zoning map amendment is consistent with applicable Neighborhood Plans.
7. This official zoning map amendment (rezoning) complies with Article 2.F (Concurrency) of the Palm Beach County Unified Land Development Code.

8. The applicant has demonstrated that there are sufficient changed conditions or circumstances that require an amendment.

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 PDDPDD-2008-00449, the application of W & W XXIII LLC, by Cotleur & Hearing, Inc., agent, for an Official Zoning Map Amendment to a Planned Development District to allow a rezoning from the Agricultural Residential (AR) and the General Commercial (CG) Zoning Districts to the Multiple Use Planned Development (MUPD) Zoning District in the MUPD Zoning 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 October 23, 2008, subject to the conditions of approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Jeff Koons 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	-	Absent
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 October 23, 2008.

Filed with the Clerk of the Board of County Commissioners on 23rd day of October, 2008.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

SHARON R. BOCK,
CLERK & COMPTROLLER

BY: 
COUNTY ATTORNEY

BY: 
DEPUTY CLERK



EXHIBIT A

LEGAL DESCRIPTION

ALL OF TRACT 24, BLOCK 44, PALM BEACH FARMS COMPANY PLAT NO. 3, AS RECORDED IN PLAT BOOK 2, PAGE 45 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING IN SECTION 12, TOWNSHIP 45 SOUTH, RANGE 41 EAST, PALM BEACH COUNTY, FLORIDA, LESS THE FOLLOWING:

PARCEL 119

THAT PART OF TRACT 24, BLOCK 44, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGE 45 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, AND THAT PART OF THE NORTH 1/2 OF A 9.144 METER (30.00 FOOT WIDE) ROAD, DIKE AND DITCH LYING SOUTHERLY AND ADJACENT TO SAID TRACT 24, IN SECTION 12, TOWNSHIP 45 SOUTH, RANGE 41 EAST, SAID PART BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A FOUND PALM BEACH COUNTY BRASS DISC MARKING THE SOUTHEAST CORNER OF SAID SECTION 12; THENCE NORTH 89°05'04" EAST, A DISTANCE OF 1.716 METERS (5.63 FEET) TO A POINT ON THE BASELINE OF SURVEY FOR STATE ROAD 7 (U.S. 441) AS SHOWN ON THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP FOR SECTION 93210-2525; THENCE NORTH 00°54'56" WEST ALONG SAID BASELINE OF SURVEY, A DISTANCE OF 177.026 METERS (580.79 FEET); THENCE NORTH 00°39'09" WEST CONTINUING ALONG SAID BASELINE OF SURVEY, A DISTANCE OF 213.398 METERS (700.12 FEET); THENCE SOUTH 89°20'51" WEST ALONG A LINE AT A RIGHT ANGLE TO THE LAST DESCRIBED COURSE, A DISTANCE OF 22.860 METERS (75.00 FEET) TO A POINT ON THE WESTERLY EXISTING RIGHT-OF-WAY LINE FOR SAID STATE ROAD 7 (U.S. 441); THENCE NORTH 00°39'09" WEST ALONG SAID WESTERLY EXISTING RIGHT-OF-WAY LINE, A DISTANCE OF 42.073 METERS (138.03 FEET) TO THE POINT OF BEGINNING; THENCE SOUTH 88°06'39" WEST, A DISTANCE OF 48.171 METERS (158.04 FEET); THENCE NORTH 00°39'09" WEST, A DISTANCE OF 205.869 METERS (675.42 FEET) TO A POINT ON THE NORTH LINE OF SAID TRACT 24; THENCE NORTH 88°09'08" EAST ALONG SAID NORTH LINE, A DISTANCE OF 48.170 METERS (158.04 FEET) TO A POINT ON SAID WESTERLY EXISTING RIGHT-OF-WAY LINE; THENCE SOUTH 00°39'09" EAST ALONG SAID WESTERLY EXISTING RIGHT-OF-WAY LINE, A DISTANCE OF 205.834 METERS (675.31 FEET) TO THE POINT OF BEGINNING.

CONTAINING 0.9914 HECTARES (2.450 ACRES), MORE OR LESS.

SUBJECT TO THE FOLLOWING:

A PERPETUAL AND EXCLUSIVE EASEMENT FOR RIGHT-OF-WAY OR PUBLIC ROAD PURPOSES OVER, UPON, UNDER AND ACROSS THE BELOW DESCRIBED LAND IDENTIFIED AS PARCEL 819; TOGETHER WITH THE RIGHT TO ENTER UPON SAID LAND AND CONSTRUCT AND MAINTAIN A PUBLIC ROAD THEREON, WITH ALL SUCH FILLS, CUTS, DRAINS, DITCHES AND OTHER INCIDENTENCES NECESSARY OR CONVENIENT IN CONNECTION THEREWITH.

PARCEL 819

THAT PART OF TRACT 24, BLOCK 44, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGE 45 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, AND THAT PART OF THE NORTH 1/2 OF A 9.144 METER (30.00 FOOT) ROAD, DIKE AND DITCH LYING SOUTHERLY AND ADJACENT TO SAID TRACT 24, IN SECTION 12, TOWNSHIP 45

SOUTH, RANGE 41 EAST, SAID PART LYING WITHIN 7.000 METERS (22.97 FEET) WESTERLY OF AND CONTIGUOUS TO THE FOLLOWING DESCRIBED LINE:

COMMENCE AT A FOUND PALM BEACH COUNTY BRASS DISC MARKING THE SOUTHEAST CORNER OF SAID SECTION 12; THENCE NORTH 89°05'04" EAST, A DISTANCE OF 1.716 METERS (5.63 FEET) TO A POINT ON THE BASELINE OF SURVEY FOR STATE ROAD 7 (U.S. 441) AS SHOWN ON THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP FOR SECTION 93210-2525; THENCE NORTH 00°54'56" WEST ALONG SAID BASELINE OF SURVEY, A DISTANCE OF 177.026 METERS (580.79 FEET); THENCE NORTH 00°39'09" WEST CONTINUING ALONG SAID BASELINE OF SURVEY, A DISTANCE OF 212.358 METERS (696.71 FEET); THENCE SOUTH 89°20'51" WEST ALONG A LINE AT A RIGHT ANGLE TO THE LAST DESCRIBED COURSE, A DISTANCE OF 71.020 METERS (233.00 FEET); THENCE NORTH 00°39'09" WEST, A DISTANCE OF 42.073 METERS (138.03 FEET) TO THE BEGINNING OF THE HEREIN DESCRIBED LINE; THENCE NORTH 00°39'09" WEST, A DISTANCE OF 205.869 METERS (675.42 FEET) TO THE END OF THE HEREIN DESCRIBED LINE; THENCE NORTH 89°20'51" EAST ALONG A LINE AT A RIGHT ANGLE TO SAID BASELINE OF SURVEY, A DISTANCE OF 71.020 METERS (233.00 FEET) TO A POINT ON SAID BASELINE OF SURVEY; THENCE SOUTH 00°39'09" EAST ALONG SAID BASELINE OF SURVEY, A DISTANCE OF 460.30 METERS (1,510.17 FEET); THENCE SOUTH 00°54'56" EAST CONTINUING ALONG SAID BASELINE OF SURVEY, A DISTANCE OF 177.026 METERS (580.79 FEET); THENCE SOUTH 89°05'04" WEST, A DISTANCE OF 1.716 METERS (5.63 FEET) TO A FOUND PALM BEACH COUNTY BRASS DISC MARKING THE SOUTHEAST CORNER OF SAID SECTION 12.

CONTAINING 1,441 SQUARE METERS (15,512 SQUARE FEET), MORE OR LESS.

EXHIBIT B
VICINITY SKETCH

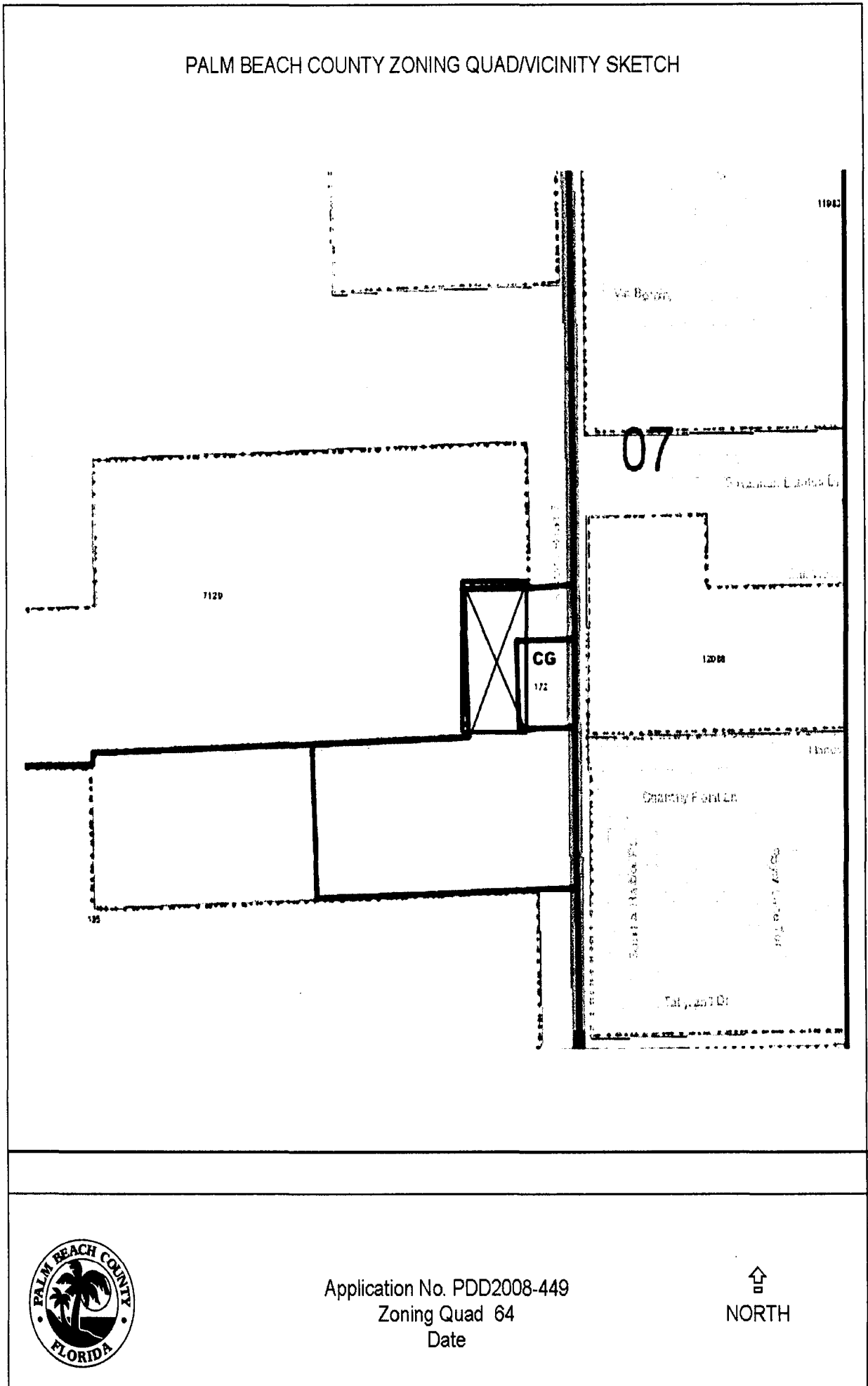


EXHIBIT C

CONDITIONS OF APPROVAL

ALL PETITIONS

1. Development of the site is limited to the site design as approved by the Board of County Commissioners. The approved Preliminary Site plan is dated July 14, 2008. Replacement of a use by another use listed as permitted by right or permitted subject to approval by the Development Review Officer (DRO) pursuant to Table 3.E.1.B may be allowed subject to the approval by the DRO. All other modifications must be approved by the Board of County Commissioners or Zoning Commission 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 Development Review Officer (DRO) approval, the architectural elevations for the retail and professional office building 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 December 31, 2010. 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 i) construct a right turn lane north approach on SR 7 at the project's entrance ii) extend the existing left turn bay on SR-7 at the first median break (at Hanover Point), just south of the project entrance. The length of these turn lanes should be 280 feet deceleration/storage+ 50 feet taper or as approved by the County Engineer.

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.

a. Permits required from the Florida Department of Transportation for this construction shall be obtained prior to the issuance of the first Building Permit. (BLDG PERMIT: MONITORING-Eng)

b. Construction shall be completed prior to the issuance of the first Certificate of Occupancy. (CO: MONITORING-Eng)

3. Landscape Within the Median of SR 7

a. The Property Owner shall design, install and perpetually maintain the median landscaping within the median of all abutting right of way of SR 7. 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:ENG-Eng)

- b. The necessary permit(s) for this landscaping and irrigation shall be applied for prior to the issuance of the first building permit. (BLDG PERMIT: MONITORING-Eng)
- c. All installation of the landscaping and irrigation shall be completed prior to the issuance of the first certificate of occupancy. (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, the Property Owner may make a contribution to the County's Only Trees Irrigation and Sod, OTIS program, unincorporated thoroughfare beatification 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 SR 7. 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)

ENVIRONMENTAL

1.All existing native vegetation, including understory, depicted on the site plan to remain shall be maintained in perpetuity. Areas where existing native vegetation have been incorporated into the site plan shall be maintained free from invasive, exotic and non-native species. (ONGOING:ERM-ERM)

ZONING - LANDSCAPING-LANDSCAPE - STANDARD

1.Prior to the issuance of a building permit, 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 the conditions of approval as contained herein. (BLDG PERMIT: LANDSCAPE - Zoning)

ZONING - LANDSCAPING

2.All palm or pine trees required to be planted on the property by this approval shall meet the following minimum standards at installation:

- a. heights: twelve (12) feet clear trunk;
- b. clusters: staggered heights twelve (12) to eighteen (18) feet; and,
- c. credit may be given for existing or relocated palms or pines provided they meet current ULDC requirements. (BLDG PERMIT: LANDSCAPE - Zoning)

3.Special planting treatment shall be provided on both sides of the access point from State Road 7, as shown on the site plan dated July 14, 2008. Planting shall consist of the following:

- a. a minimum of three (3) native palms or flowering trees;
- b. appropriate ground cover and native shrubs;
- c. all plant materials shall be planted in a naturalistic and meandering pattern. (BLDG PERMIT: LANDSCAPE - Zoning)

ZONING - LANDSCAPING-LANDSCAPING ALONG THE EAST PROPERTY LINE (ABUTTING STATE ROAD 7)

4.In addition to the code requirements, landscaping and buffer width along the east property line (abutting State Road 7) shall be upgraded to include:

- a. one (1) pine for each twenty (20) linear feet of the property line; and shall be planted in

clusters of five (5) to seven (7) pines. Pine height shall be a minimum of twelve (12) feet to sixteen (16) feet at installation and have a maximum spacing of forty (40) feet between clusters; and

b. Saw Palmetto shall replace the ULDC requirement for medium shrubs. (BLDG PERMIT: LANDSCAPE - Zoning)

PALM TRAN

1. Prior to Plat Recordation, the property owner shall convey and/or dedicate to Palm Beach County an easement for a Bus Stop Boarding and Alighting Area in a form with terms and conditions approved by Palm Tran. Supporting documentation, including but not limited to a location sketch, legal description, affidavit of ownership, attorney title opinion and other related documents as deemed necessary by Palm Tran is required. (PLAT: ENG -Palm Tran)

USE LIMITATIONS

1. Outdoor retail business activities shall not be allowed on the property, except for deliveries and drive-thru activities only. (ONGOING: CODE ENF - Zoning)

2. Overnight storage or parking of delivery vehicles or trucks shall not be permitted on site, except within designated loading and delivery areas. (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)