

RESOLUTION NO. R-2012- 1050

RESOLUTION APPROVING ZONING APPLICATION ZV/DOA/R-2011-02915
(CONTROL NO. 1973-00116)
a Development Order Amendment
APPLICATION OF Cumberland Farms, Inc.
BY Lewis Longman and Walker PA, AGENT
(Cumberland Farms SR 7)

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

WHEREAS, Zoning Application ZV/DOA/R-2011-02915 was presented to the Board of County Commissioners at a public hearing conducted on July 26, 2012; 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, the, Board of County Commissioners pursuant to Article 2 (Development Review Procedures) 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 the request; 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 hereby incorporates by reference the Findings of Fact in the staff report addressing the standards contained in Article 2.B.2.B for a a Development Order 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 ZV/DOA/R-2011-02915, the petition of Cumberland Farms, Inc., by Lewis Longman and Walker PA, agent, for a Development Order Amendment to reconfigure the Site Plan in the General Commercial with Special Exception (CG/SE) 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 July 26, 2012, subject to the Conditions of Approval described in EXHIBIT C-2, 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:

Commissioner Shelley Vana, Chair	- Aye
Commissioner Steven L. Abrams, Vice Chairman	- Aye
Commissioner Karen T. Marcus	- Aye
Commissioner Paulette Burdick	- Aye
Commissioner Burt Aaronson	- Aye
Commissioner Jess R. Santamaria	- Aye
Commissioner Priscilla A. Taylor	- Aye

The Chairperson thereupon declared that the resolution was duly passed and adopted on July 26, 2012.

Filed with the Clerk of the Board of County Commissioners on July 31, 2012.

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 R. BOCK,
CLERK & COMPTROLLER

BY:


COUNTY ATTORNEY

BY:


DEPUTY CLERK FLORIDA



EXHIBIT A

LEGAL DESCRIPTION

CUMBERLAND FARMS
22905 State Road 7
PCN: 00-41-47-25-01-054-0021

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 25, TOWNSHIP 47 SOUTH, RANGE 41 EAST, PALM BEACH COUNTY, FLORIDA, AS SURVEYED BY THE STATE OF FLORIDA IN MAY AND JUNE 1912 AND AS SHOWN ON RIGHT-OF-WAY MAP OF FLORIDA STATE ROAD DEPARTMENT IN THEIR SURVEY OF STATE ROAD NO. 7 IN FEBRUARY 1941 AS PROJECT 5268; RUN (FOR CONVENIENCE THE SOUTH LINE OF SAID SECTION 25, IS ASSUMED TO BEAR NORTH 88DEG.34'16" WEST AND ALL OTHER BEARINGS MENTIONED HEREIN ARE RELATIVE THERETO) THENCE NORTH 88DEG.34'16" WEST ALONG THE SOUTH LINE OF SECTION 25 A DISTANCE OF 148.58 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF STATE ROAD NO. 7; THENCE NORTH ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 43.53 FEET TO AN ANGLE POINT; THENCE NORTH 0DEG.28'33" EAST CONTINUING ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 501.26 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND; THENCE NORTH 89DEG.04'09" WEST ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF SANDALFOOT BOULEVARD WEST A DISTANCE OF 131.61 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTH HAVING A RADIUS OF 793.94 FEET; THENCE WESTERLY ALONG THE ARC OF SAID CURVE SUBTENDING A CENTRAL ANGLE OF 13DEG.41'24", A DISTANCE OF 189.70 FEET TO A POINT IN THE EASTERLY BOUNDARY OF LANDS SHOWN AND DESCRIBED IN OFFICIAL RECORD BOOK 1955, PAGES 1599 AND 1600, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE DEPARTING FROM SANDALFOOT BOULEVARD WEST AND RUNNING ALONG SAID EASTERLY BOUNDARY NORTH 0DEG.28'33" EAST, A DISTANCE OF 222.55 FEET TO THE NORTHWESTERLY CORNER OF THE HEREIN DESCRIBED PARCEL OF LAND; THENCE SOUTH 89DEG.04'09" EAST A DISTANCE OF 319.68 FEET TO A POINT ON THE AFORESAID WESTERLY RIGHT-OF-WAY LINE OF STATE ROAD NO. 7; THENCE SOUTH 0DEG.28'33" WEST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 200.00 FEET TO THE POINT OF BEGINNING. LESS THE EAST 99 FEET THEREOF.

EXHIBIT B

VICINITY SKETCH

VICINITY SKETCH

Cumberland Farms / SR 7
and Sandalfoot Boulevard

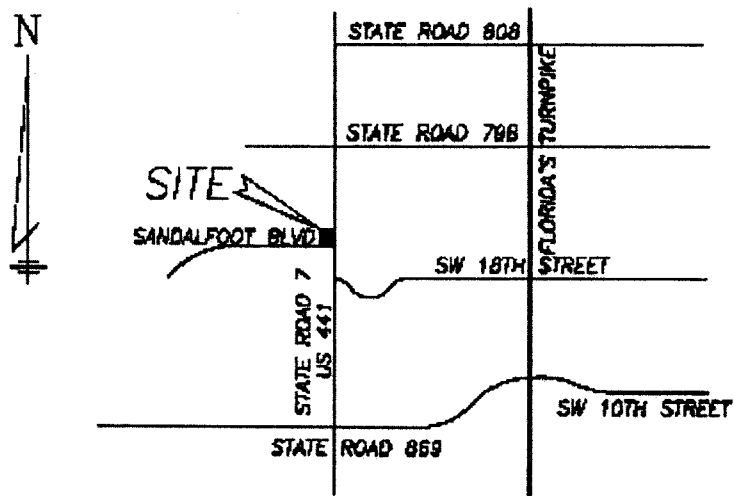


EXHIBIT C-2

CONDITIONS OF APPROVAL Development Order Amendment

ALL PETITIONS

1. Previous All Petition Condition 1 of Resolution R-2007-1035 (Control No. 1973-00116) which currently states:

All previous conditions of approval applicable to the subject property, as contained in Resolution R-96-003 (Control 73-1116) have been consolidated as contained herein. The property owner shall comply with all previous conditions of approval and deadlines previously established by Article 2.E of the ULDC and the Board of County Commissioners or Zoning Commission, unless expressly modified. (ONGOING: MONITORING - Zoning)

Is hereby amended to read:

All previous Conditions of Approval applicable to the Planned Commercial Development, as contained in Resolution R-73-431 (Control No. 1973-00116) and Resolution R-86-845 (Control 1973-00116), have been consolidated as contained herein. The property owner shall comply with all previous Conditions of Approval and deadlines previously established by Article 2.E of the Unified Land Development Code (ULDC) and the Board of County Commissioners or Zoning Commission, unless expressly modified. (ONGOING: MONITORING - Zoning)

2. Previous All Petition Condition 2 of Resolution R-2007-1035 (Control No. 1973-00116) which currently states:

Development of the site is limited to the site design approved by the Board of County Commissioners. The approved site plan is dated March 19, 2007. All 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)

Is hereby amended to read:

The approved Preliminary Master Plan is dated May 17, 2012. Modifications to the Development Order inconsistent with the Conditions of Approval, or changes to the uses or site design beyond the authority of the Development Review Officer as established in the Unified Land Development Code, must be approved by the Board of County Commissioners. (ONGOING: ZONING - Zoning)

ENGINEERING

1. CONVEYANCE OF RIGHT 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 a 25 foot corner clip at SR 7 and Sandalfoot Boulevard. Right of way deed and associated documents shall be provided and approved prior to the issuance of a Building Permit.

Right of way conveyance 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. 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. (BLDG PERMIT: MONITORING-Eng)

2. 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: ENGINEERING - 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: ENGINEERING - 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: ENGINEERING - Eng)

3. 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, 2015. 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)

4. Prior to issuance of the first building permit the property owner shall combine the property into a single lot of record in accordance with provisions of Article 11 of the Unified Land Development Code. (BLDG PERMIT: MONITORING-Eng)

5. Prior to the issuance of any building permits, the developer shall dedicate, the additional ninety-nine (99) feet required to provide for the ultimate right-of-way for State Road 7. (Previous Condition 1 of Resolution R-73-431, Control No. 1973-116) [NOTE: COMPLETED]

6. The developer shall construct the turning lanes as shown on the site plan. (ONGOING: ENGINEERING - Eng) (Previous Condition 2 of Resolution R-73-431, Control No. 1973-116) [NOTE: COMPLETED]

7. Previous Condition 12 of Resolution R-86-845, Control 1973-116, which currently states: The development shall retain onsite 85% of the stormwater runoff generated by a three (3) year-one hour storm per requirements of the Permit Section, Land Development Division. The drainage system shall by maintain in an acceptable condition per the County Engineers approval. (This condition relates to the additional square footage only).

Is hereby deleted. [REASON: DRAINAGE IS A CODE REQUIREMENT]

8. 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 \$16,610.00 (200 trips X \$26.79 per trip). (Previous Condition 13 of Resolution R-86-845, Control 1973-116) [NOTE: COMPLETED]

9. Based on the Traffic Performance Standards (Category "B"), the Developer shall contribute an additional \$4,152.00 toward palm Beach County's existing Roadway Improvement Program, these total funds of \$20,762.00 to be paid prior to the issuance of a Building Permit or priro to january 1, 1987 whichever shall first occur. If the "Fair Share Contribution for Road Improvement Ordinance" is amended to increase the fair Share Fee, this additional amount of \$4152.00 shall be credited toward the increased Fair Share Fee.(Previous Condition 14 of Resolution R-86-845, Control 1973-116) [NOTE: COMPLETED]

10. Previous Condition 15 of Resolution R-86-845, Control 1973-116, which currently states:

The property owner shall obtain an onsite Drainage Permit from the palm Beach county Engineering department Permit section prior to the application of a Building permit. (This condition relates to the additional square footage only).

Is hereby deleted. [REASON: DRAINAGE APPROVAL IS A CODE REQUIREMENT]

HEALTH

1. Reasonable precautions shall be exercised during site development to insure that unconfined particulates (dust particles) from this property do not become a nuisance to neighboring properties. (Previous Condition 8 of Resolution R-86-845, Control 1973-00116) (BLDG PERMIT: HEALTH - Health)

2. Reasonable measures shall be employed during site development to insure that no pollutants from this property shall enter adjacent or nearby surface waters. (Previous Condition 9 of Resolution R-86-845, Control 1973-00116) (BLDG PERMIT: HEALTH - Health)

3. Any fuel or chemical storage tanks shall be installed in accordance with Chapter 17-61, Florida Administrative Code. The design and installation plans will be submitted to the Health Department of approval prior to installation. (Previous Condition 10 of Resolution R-86-845, Control 1973-00116) (BLDG PERMIT: HEALTH - Health)

4. Any toxic or hazardous waste generated at this site shall be properly handled and disposed of in accordance with Chapter 17-30, F.A.C(Previous Condition 11 of Resolution R-86-845, Control 1973-00116) (ONGOING: CODE ENF- Health)

SITE DESIGN

1. Prior to site plan certification, the site plan shall be amended to reflect the following:

a. Include both required and proposed interior landscaping calculations within the site data

tabular information and delineation of proposed landscaping onsite;

b. Sufficient interior landscaping to conform to the twenty (20) square foot per stall requirement.

c. A six (6) foot solid masonry wall in the five (5) foot landscape buffer between the site and the abutting residential properties. (Previous Condition 1 of Resolution R-86-845, Control 1973-00116) (DRO: Zoning- Landscape)

2. All mechanical and air conditioning equipment shall be roof mounted and screened with parapets or be contained within the enclosed loading and service area. (Previous Condition 2 of Resolution R-86-845, Control 1973-00116) (DRO: Zoning- ARCH Review)

3. The rear facades of the building shall be given architectural treatment consistent with the front of the building to avoid an incompatible appearance impact upon nearby residential development. (Previous Condition 3 of Resolution R-86-845, Control 1973-00116) (DRO: Zoning- ARCH Review)

4. No storage or placement of any materials, refuse, equipment or accumulated debris shall be permitted behind the structure. (Previous Condition 4 of Resolution R-86-845, Control 1973-00116) (ONGOING: CODE ENF- Zoning)

5. The required six (6) foot high wall shall received identical architectural treatment on both sides consistent with the front of the center. (Previous Condition 6 of Resolution R-86-845, Control 1973-00116) (ONGOING: CODE ENF- Zoning)

6. No parking of any vehicles shall be permitted along the rear the shopping center except in designated spaces and unloading areas. (Previous Condition 7 of Resolution R-86-845, Control 1973-00116) (ONGOING: CODE ENF- Zoning)

COMPLIANCE

1. In granting this approval, the Board of County Commissioners relied upon the oral and written representations of the property owner/applicant 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 (CO); 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 Unified Land Development Code (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 Official Zoning Map Amendment, Conditional Use, Requested Use, 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. (ONGOING: MONITORING - Zoning)