

RESOLUTION NO. R-2020- 1238

RESOLUTION APPROVING ZONING APPLICATION ZV/CA-2019-00294  
(CONTROL NO. 1985-00122)  
a Class A Conditional Use  
APPLICATION OF Hypoluxo Plaza II LLC, Sidhdhi Desai  
BY Schmidt Nichols, AGENT  
(Ridgeline Dunkin)

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;

WHEREAS, the notice and public hearing requirements pursuant to Article 2 (Application Processes and Procedures) of the Palm Beach County Unified Land Development Code (ULDC), Ordinance 2003-067, Supplement No. 25, have been satisfied;

WHEREAS, Zoning Application ZV/CA-2019-00294 was presented to the Board of County Commissioners at a public hearing conducted on August 27, 2020;

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;

WHEREAS, the Board of County Commissioners pursuant to Article 2 (Application Processes and Procedures) of the ULDC is authorized and empowered to consider, approve, approve with conditions or deny the request;

WHEREAS, the Board of County Commissioners hereby incorporates by reference the Findings in the staff report addressing the Standards contained in Article 2.B (Public Hearing Processes) for a Class A Conditional Use;

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

WHEREAS, the issuance of this Development Permit does not in any way create any rights on the part of the Applicant and/or Property Owner to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the Applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law;

WHEREAS, the Palm Beach County Survey Section may administratively correct any scrivener's errors that will not significantly impact the overall boundary of the adopted legal description; and,

WHEREAS, Article 2.B.6.C (Board Action) of the ULDC 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/CA-2019-00294, the Application of Hypoluxo Plaza II LLC, Sidhdhi Desai, by Schmidt Nichols, Agent, for a Class A Conditional Use to allow a Type 1 Restaurant with a Drive-Through, on a parcel of land generally described as shown on the legal description 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 August 27, 2020, subject to the Conditions of Approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Weinroth moved for the approval of the Resolution.

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

Commissioner Dave Kerner, Mayor	-	Aye
Commissioner Robert S. Weinroth, Vice Mayor	-	Aye
Commissioner Hal R. Valeche	-	Aye
Commissioner Gregg K. Weiss	-	Aye
Commissioner Mary Lou Berger	-	Absent
Commissioner Melissa McKinlay	-	Absent
Commissioner Mack Bernard	-	Aye

The Mayor thereupon declared that the resolution was duly passed and adopted on August 27, 2020.

Filed with the Clerk of the Board of County Commissioners on September 9th, 2020

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



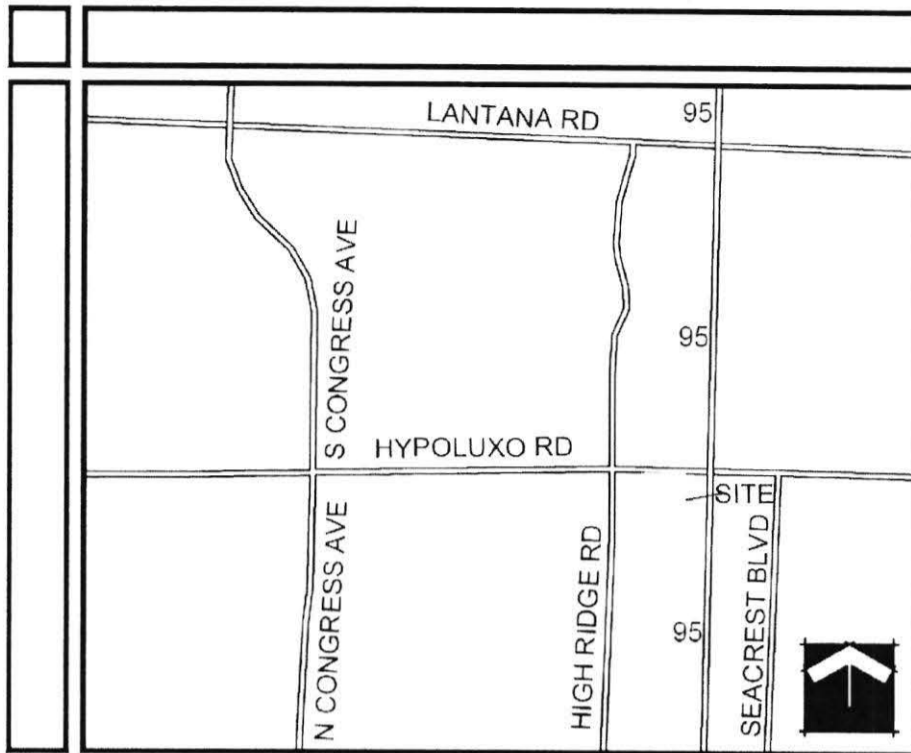
EXHIBIT A

LEGAL DESCRIPTION

COMMENCING AT THE NORTHWEST CORNER OF SECTION 9, TOWNSHIP 45 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA; THENCE SOUTH  $88^{\circ}53'16''$  EAST ALONG THE NORTH LINE OF SECTION 9, SAID LINE ALSO BEING THE CENTERLINE OF HYPOLUXO ROAD AS SHOWN ON THE RIGHT-OF-WAY MAP OF S.R. NO. 9 (I-95), SECTION 03220-2412, AND ALL BEARINGS STATED HEREIN ARE RELATIVE TO SAID RIGHT-OF-WAY MAP, 200.2 FEET; THENCE SOUTH  $02^{\circ}15'15''$  WEST ALONG A LINE THAT IS 200.16 FEET EAST OF (AS MEASURED AT RIGHT ANGLES) AND PARALLEL WITH THE WEST LINE OF SAID SECTION 9, SAID WEST LINE ALSO BEING THE CENTERLINE OF HIGH RIDGE ROAD, 53.01 FEET TO THE POINT OF BEGINNING; THENCE SOUTH  $02^{\circ}15'15''$  WEST, 137.00 FEET; THENCE SOUTH  $88^{\circ}53'16''$  EAST, PARALLEL WITH THE NORTH LINE OF SAID SECTION 9, 150.00 FEET; THENCE NORTH  $02^{\circ}15'15''$  EAST, PARALLEL WITH THE WEST LINE OF SAID SECTION 9, 134.95 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF HYPOLUXO ROAD, THENCE NORTH  $81^{\circ}51'25''$  WEST ALONG SAID RIGHT-OF-WAY LINE OF 16.75 FEET OF A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF HYPOLUXO ROAD, SAID LINE BEING 53.00 FEET SOUTH OF (AS MEASURED AT RIGHT ANGLES) AND PARALLEL WITH THE NORTH LINE OF SAID SECTION 9, THENCE NORTH  $88^{\circ}53'16''$  WEST CONTINUING ALONG SAID RIGHT-OF-WAY LINE, 133.33 FEET TO THE POINT OF BEGINNING LESS THAT PORTION OF THE NORTH 54.00 FEET OF SECTION 9, TOWNSHIP 45 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA.

CONTAINING AREA: 20391.44 SQ. FT. OR 0.468 ACRES

EXHIBIT B  
VICINITY SKETCH



## EXHIBIT C

### CONDITIONS OF APPROVAL

#### **Class A Conditional Use - Type 1 Restaurant with a Drive-Through**

##### **ALL PETITIONS**

1. The approved Preliminary Site Plan is dated June 22, 2020. 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 or the Zoning Commission. (ONGOING: 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:

a. No Building Permits for the site may be issued after December 31, 2022, or as amended. 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 Art. 2.E of the Unified Land Development Code. (DATE: MONITORING - Engineering)

2. Prior to the issuance of the first building permit, the Property Owner shall configure the property into a legal lot of record in accordance with provisions of Article 11 of the Unified Land Development Code or as otherwise approved by the County Engineer. (BLDGPMT: MONITORING - Engineering)

3. The Property Owner shall provide to the Palm Beach County Right of Way Section of Roadway Production Division a warranty deed for road right of way and all associated documents as required by the County Engineer for Hypoluxo Road for 61 feet, measured from centerline of the proposed right of way on an alignment approved by the County Engineer

All warranty deed(s) and associated documents, including a title policy naming Palm Beach County as an insured, shall be provided and approved prior to the issuance of the first building permit or within ninety (90) days of a request by the County Engineer, whichever shall occur first. Right of way conveyance shall be along the entire frontage and shall be free and clear of all encroachments and encumbrances. Property Owner shall provide Palm Beach County with sufficient documentation acceptable to the Right of Way Section to ensure that the property is free of all encumbrances and encroachments, including a topographic survey. The Property Owner must further warrant 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 Property Owner, the Property Owner agrees to hold the County 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 as determined by the County Engineer, additional right of way for Expanded Intersections and Corner Clips. The Property Owner shall not record these required deeds or related documents. The Property Owner shall provide to the Right of Way Section a tax pro-ration. A check, made payable to the Tax Collector's Office, shall be submitted by the Property Owner for the pro-rated taxes. After final acceptance, Palm Beach County shall record all appropriate deeds and documents. (BLDGPMT/ONGOING: MONITORING - Engineering)

4. The Property Owner shall submit an access easement to the County that provides access to this site from Hypoluxo Road and High Ridge Road, or as approved by the



County Engineer.

a. The easement shall be approved by the County Attorney and Land Development prior to recordation. The easements shall be recorded by the Property Owner prior to the final approval of the Site Plan by the Development Review Officer. (DRO: ENGINEERING - Engineering)

b. If alternative development-suitable access becomes available to either of the parcels above, the Property Owner may abandon the portion of the easement which is not needed to serve as access for the parcel. (ONGOING: ENGINEERING - Engineering)

5. Property Owner shall construct a minimum five (5) foot wide concrete sidewalk along the south side of Hypoluxo Road within the property frontage. 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. The sidewalk shall be completed prior to the issuance of the first certificate of occupancy. If approved by the County Engineer, the Property Owner may submit payment in lieu of construction in an amount approved by the County Engineer and the condition shall be considered satisfied. (BLDG/PMT/CO: MONITORING - Engineering)

## **ENVIRONMENTAL**

1. Prior to the approval of the Final Site Plan by the Development Review Officer a Wellfield Affidavit of Notification shall be submitted to the Department of Environmental Resources Management (ERM). (DRO: ENVIRONMENTAL RESOURCES MANAGEMENT - Environmental Resources Management)

## **PLANNING**

1. Prior to final approval by the Development Review Officer (DRO), in a form approved by and acceptable to the County Attorney, submit a recorded cross access easement agreement, for the location depicted on the site plans. (DRO: PLANNING - Planning)

2. Construct, and pave to the property line, the cross access as shown on the site plans prior to the release of the Certificate of Occupancy. (CO: MONITORING - Planning)

## **SIGNS**

1. The Property Owner shall provide signage to indicate that the site is limited to Drive-Through sales only. (ONGOING: ZONING - Zoning)

## **USE LIMITATIONS**

1. The Use of this Type 1 Restaurant shall be limited to Drive-Through sales only. No indoor or outdoor seating for customers shall be allowed. (ONGOING: ZONING - 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; 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; the 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 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 of Approval; 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)

**DISCLOSURE**

1. All applicable state or federal permits shall be obtained before commencement of the development authorized by this Development Permit.