

RESOLUTION NO. R-2023- 1180

RESOLUTION APPROVING ZONING APPLICATION SV/ZV/ABN/DOA/W-2022-01312
(CONTROL NO. 1977-00031)
a Development Order Amendment
APPLICATION OF Restoration Property Holdings Inc., Posh Hospitality No. 3,
Congress Avenue LLC
BY Dunay, Miskel and Backman, LLP, AGENT
(Posh Hospitality No. 3)

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, Ordinance 2003-067 as amended (ULDC), have been satisfied;

WHEREAS, Zoning Application DOA-2022-01120 submitted on behalf of Restoration Property Holdings Inc., Posh Hospitality No. 3, and Congress Avenue LLC by Dunay, Miskel and Backman, LLP, Agent, for Backman, LLP, Agent, for a Development Order Abandonment to abandon a Hotel on 2.48 acres; a Development Order Amendment to reconfigure the Site Plan, add land area and access points; and to delete square footage on 2.78 acres; a Type 2 Waiver to allow an extension of the hours of operation for a non-residential use located within 250 feet of a parcel of land with a residential future land use designation or use on 2.78 acres was presented to the Board of County Commissioners at a public hearing conducted on August 24, 2023;

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 Development Order Amendment;

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 SV/ZV/ABN/DOA/W-2022-01312, the Application of Restoration Property Holdings Inc.,

Posh Hospitality No. 3, Congress Avenue LLC, by Dunay, Miskel and Backman, LLP, Agent, for a Development Order Amendment to reconfigure the Site Plan, add land area and access points; and to delete square footage on 2.78 acres, 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 24, 2023, subject to the Conditions of Approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Bernard moved for the approval of the Resolution.

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

Commissioner Gregg K. Weiss, Mayor	-	Aye
Commissioner Maria Sachs, Vice Mayor	-	Aye
Commissioner Maria G. Marino	-	Aye
Commissioner Michael A. Barnett	-	Aye
Commissioner Marci Woodward	-	Aye
Commissioner Sara Baxter	-	Aye
Commissioner Mack Bernard	-	Aye

The Mayor thereupon declared that the resolution was duly passed and adopted on August 24, 2023.

Filed with the Clerk of the Board of County Commissioners on August 24th, 2023

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

JOSEPH ABRUZZO,
CLERK & COMPTROLLER

BY: 
COUNTY ATTORNEY

BY: 
DEPUTY CLERK



EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

LOTS 1 THROUGH 13 AND 25, BLOCK 2, PALM ACRES ESTATES, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 20, PAGE 5, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

PARCEL 2:

LOTS 23 AND 24, BLOCK 2, PALM ACRES ESTATES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 20, PAGE 5, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

TOGETHER WITH:

THE NORTH 25 FEET OF THE FOLLOWING DESCRIBED TRACT: A PORTION OF OKLAHOMA STREET BEING A 50 FOOT WIDE PUBLIC RIGHT OF WAY, ADJOINING THE SOUTH LINE OF LOTS 5 THROUGH 13 INCLUSIVE, BLOCK 2 AND THE NORTH LINE OF BLOCK 1 OF "PALM ACRES ESTATES", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 20, PAGE 5, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8" IRON REBAR AT THE SOUTHWEST CORNER OF LOT 5 OF SAID PLAT, SAID POINT ALSO BEING THE WEST LINE OF SAID PLAT AND THE EAST RIGHT-OF-WAY LINE OF CONGRESS AVENUE (SR 807); THENCE ALONG THE SAID EAST RIGHT-OF-WAY LINE NORTH 02°32'46" EAST A DISTANCE OF 287.01 FEET TO THE NORTHWEST CORNER OF LOT 1; THENCE DEPARTING SAID EAST LINE SOUTH 88°38'09" EAST A DISTANCE OF 254.45 FEET ALONG THE SOUTH RIGHT-OF-WAY LINE OF KENTUCKY STREET TO THE NORTHEAST CORNER OF LOT 23; THENCE DEPARTING SAID SOUTH LINE SOUTH 02°59'04" WEST A DISTANCE OF 143.53 FEET TO THE SOUTHEAST CORNER OF LOT 23; THENCE SOUTH 88°38'09" EAST A DISTANCE OF 249.26 FEET TO THE NORTHEAST CORNER OF LOT 13; THENCE SOUTH 03°06'40" WEST A DISTANCE OF 168.54 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 25.00 FEET OF A ABANDONED PORTION OF OKLAHOMA STREET (TO BE ABANDONED BY SEPARATE INSTRUMENT); THENCE RUNNING ALONG SAID SOUTH LINE NORTH 88°38'09" WEST A DISTANCE OF 500.95 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF CONGRESS AVENUE (SR 807); THENCE ALONG THE SAID EAST RIGHT-OF-WAY LINE NORTH 02°32'46" EAST A DISTANCE OF 25.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 120,961 SQUARE FEET OR 2.78 TOTAL ACRES.

EXHIBIT B
VICINITY SKETCH

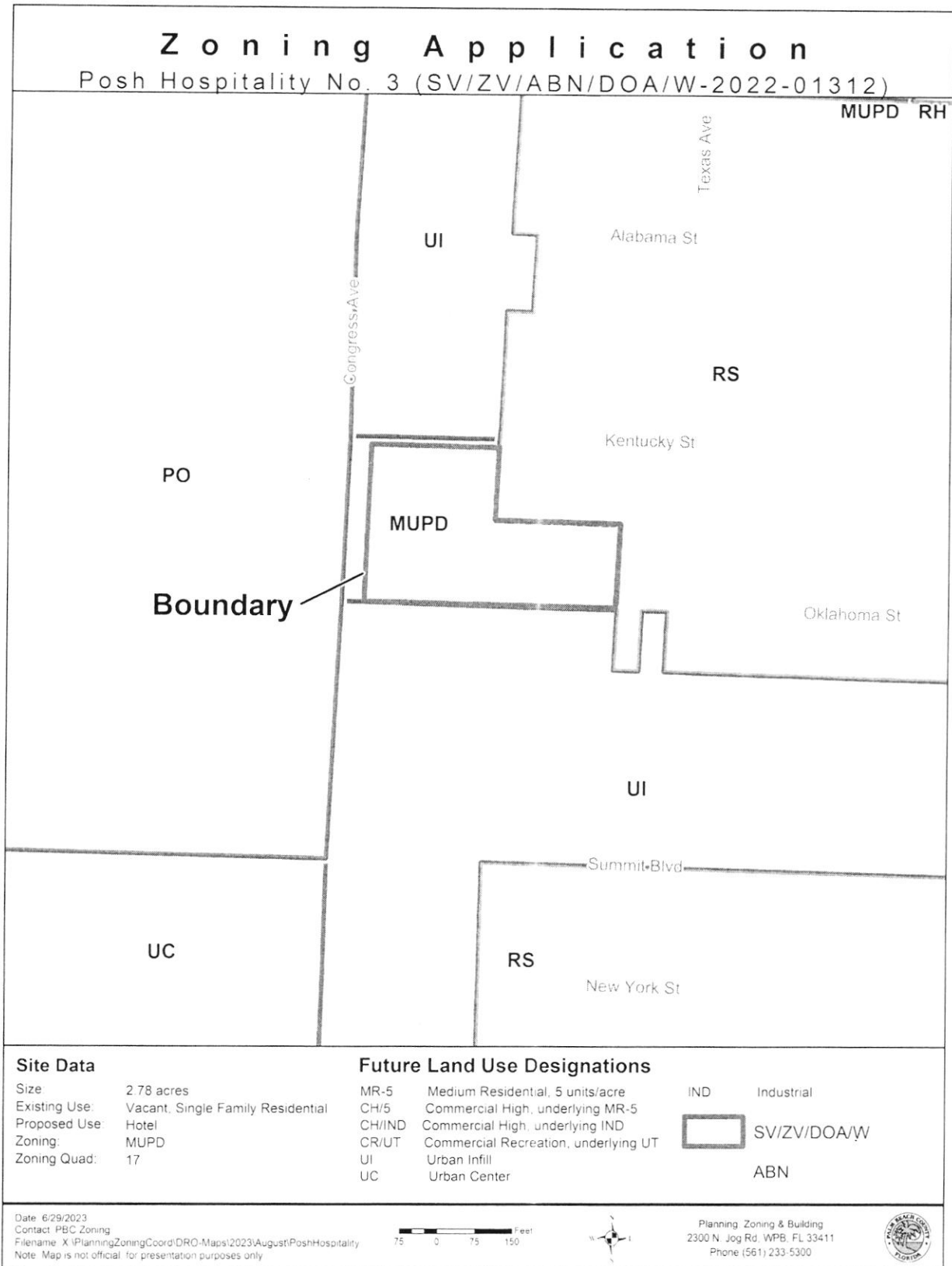


EXHIBIT C

CONDITIONS OF APPROVAL

Development Order Amendment

ALL PETITIONS

1. The approved Preliminary Site Plan is dated June 20, 2023. 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. No Building Permits for the site may be issued after December 31, 2027, 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. (BLDGPM: MONITORING - Engineering)

3. The Property Owner shall provide to the Florida Department of Transportation (FDOT), a road right of way deed and all associated documents as required by FDOT for Congress Avenue, 60 feet plus expanded intersection, measured from centerline of the proposed right of way on an alignment approved by the FDOT and County Engineer.

All right of way deed(s) and associated documents shall be provided and approved prior to the issuance of the first building permit. Right of way conveyance shall be along the project's entire frontage and shall be free and clear of all encumbrances and encroachments. Property Owner shall provide FDOT with sufficient documentation, including, at a minimum, sketch and legal description of the area to be conveyed, copy of the site plan, a Phase I Environmental Site Assessment, status of property taxes, statement from Tax Collector of delinquent and pro-rata daily taxes, full owner name(s) of area to be conveyed, and one of the following: title report, attorney's opinion of title, title commitment or title insurance policy, or as otherwise required and acceptable to FDOT. The Property Owner must warrant that the property being conveyed to FDOT 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 and FDOT 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 coordinate conveyance of right of way directly with FDOT and shall provide evidence to Palm Beach County Land Development Division once conveyance has been completed. (BLDGPM: MONITORING - Engineering)

4. The Property Owner shall provide to the Florida Department of Transportation (FDOT), a road right of way deed and all associated documents as required by FDOT for the 25 foot corner clip at the southeast corner of Congress Avenue and Kentucky Street as approved by the FDOT and County Engineer.

All right of way deed(s) and associated documents shall be provided and approved prior to

the issuance of the first building permit. Right of way conveyance shall be along the project's entire frontage and shall be free and clear of all encumbrances and encroachments. Property Owner shall provide FDOT with sufficient documentation, including, at a minimum, sketch and legal description of the area to be conveyed, copy of the site plan, a Phase I Environmental Site Assessment, status of property taxes, statement from Tax Collector of delinquent and pro-rata daily taxes, full owner name(s) of area to be conveyed, and one of the following: title report, attorney's opinion of title, title commitment or title insurance policy, or as otherwise required and acceptable to FDOT. The Property Owner must warrant that the property being conveyed to FDOT 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 and FDOT 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 coordinate conveyance of right of way directly with FDOT and shall provide evidence to Palm Beach County Land Development Division once conveyance has been completed. (BLDGPM: MONITORING - Engineering)

5. Prior to the recordation of the plat, the Property Owner shall abandon the portion of Oklahoma Street right-of-way adjacent to the south property line. (PLAT: ENGINEERING - Engineering)

6. The Property Owner shall reconstruct Kentucky Street from Congress Avenue to the project entrance plus tapers to be consistent with Palm Beach County standards for a local commercial road. 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 for Improvements identified above shall be obtained from Palm Beach County prior to the issuance of the first Building Permit. 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. (BLDGPM: MONITORING - Engineering)

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

7. The Property Owner shall provide an acceptable drainage study identifying any historical drainage from offsite parcels, including proposed grading cross sections. The project's stormwater management system shall be designed to address any historical drainage. The Property Owner shall provide drainage easements, as required, to accommodate offsite drainage.

a. Drainage study shall be provided to the Land Development Division prior to final approval of the Site Plan by the DRO. (DRO: ENGINEERING - Engineering)

b. Any required drainage easements shall be dedicated in conjunction with any required lot combination or recorded prior to issuance of the first building permit, whichever shall occur first. (BLDGPM/PLAT: MONITORING - Engineering)

ENVIRONMENTAL

1. Prior to Final Approval by the Development Review Officer, a Phase II Environmental Site Assessment shall be submitted to the Department of Environmental Resources Management (ERM). If the results of the Phase II Environmental Site Assessment indicate areas of on-site contamination, the project shall be referred to the Florida Department of Environmental Protection (FDEP) for the development of a mitigation plan and to oversee the remediation on the site. (DRO: ENVIRONMENTAL RESOURCES MANAGEMENT - Environmental Resources Management)

LANDSCAPE - PERIMETER

1. PERIMETER LANDSCAPING ALONG THE EASTERN PROPERTY LINES (ABUTTING RESIDENTIAL)

Prior to Development Review Officer (DRO) approval, landscaping along the eastern property line shall include a six (6) foot high opaque wall. The wall may be constructed on the property line. (DRO/ONGOING: ZONING - Zoning)

2. Pines shall be installed for each thirty (30) linear feet of the eastern property line abutting residential. (BLDG/PMT: ZONING - Zoning)

PLANNING

1. Per SCA-2006-30, Ord. 2007-21 condition 1: The 0.16 acre parcel (Subject of SCA 2006-00030) shall only be used for landscaping, drainage, and parking purposes (a parking structure would be allowed) (ONGOING: PLANNING - Planning)

SIGNS

1. Prior to Final Development Review Officer (DRO) approval, the Applicant shall modify the Master Sign Plan to remove the abandoned Oklahoma Street and extend the property line. All information related to proposed signage along Oklahoma Street shall also be removed. (DRO: ZONING - Zoning)

2. Prior to Final Development Review Officer (DRO) approval, the Applicant shall modify the Preliminary Master Sign Plan to remove the wall sign along the eastern facade of the building. (DRO: ZONING - Zoning)

SITE DESIGN

1. Prior to Final Development Review Officer (DRO) approval, the Applicant shall modify the Site Plan to reflect the parking reduction request in a Type 1 Waiver table. (DRO: ZONING - Zoning)

2. Prior to Final Development Review Officer (DRO) approval, the Applicant shall modify the Site Plan to provide an additional loading space or request a reduction in the required number of loading spaces through the Type 1 Waiver process. (DRO: ZONING - Zoning)

SP - BILLBOARD DEMO

1. Within 60 days of approval by the Board of County Commissioners, a Special Permit and concurrent Demolition Permit shall be submitted for the demolition of the existing Billboard. (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: ZONING - Monitoring)

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: ZONING - Monitoring)

DISCLOSURE

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