

**PALM BEACH COUNTY
PLANNING, ZONING AND BUILDING DEPARTMENT
ZONING DIVISION**

Application No.: CA-2018-02131
Application Name: KFC/Pizza Hut Boca
Control No./Name: 2018-00130 (Kentucky Fried Chicken)
Applicant: WayJohn, Inc.
Owners: WayJohn, Inc.
Agent: Insite Studio - Brian Terry
Telephone No.: (561) 249-0940
Project Manager: Carolina Valera, Senior Site Planner

TITLE: a Class A Conditional Use REQUEST: to allow a Type 1 Restaurant with a Drive-through.

APPLICATION SUMMARY: Proposed is a Class A Conditional Use for the KFC/Pizza Hut Boca Development. The 1.02-acre site was originally developed with a Type 2 Restaurant and has no prior Board of County Commissioners (BCC) approvals.

The Applicant proposes to demolish the existing Type 2 Restaurant, and redevelop the site with a 3,700 square foot (sq. ft.) building with a 1,035 sq. ft. Type 1 Restaurant, and a 2,665 sq. ft. Type 1 Restaurant with a Drive-through, and 24 parking spaces. In addition, the Preliminary Site Plan (PSP) indicates no changes to the cross access easement between the site and State Road 7.

This application was reviewed for compliance with Unified Land Development Code (ULDC), Supplement 25.

SITE DATA:

Location:	West side of SR-7, approximately 170 feet south of SW 18th Street.
Property Control Number(s)	00-41-47-36-06-000-0060
Existing Future Land Use Designation:	Commercial High, with an underlying HR-8 (CH/8)
Proposed Future Land Use Designation:	No proposed change
Existing Zoning District:	General Commercial District (CG)
Proposed Zoning District:	No proposed change
Total Acreage:	1.02 acres
Affected Acreage:	1.02 acres
Tier:	Urban/Suburban
Overlay District:	N/A
Neighborhood Plan:	N/A
CCRT Area:	N/A
Municipalities within 1 Mile	N/A
Future Annexation Area	N/A

RECOMMENDATION: Staff recommends approval of the request subject to the Conditions of Approval in Exhibit C.

PUBLIC COMMENT SUMMARY: At the time of publication, staff had received 0 contacts from the public regarding this project.

PROJECT HISTORY:

The site is developed with a 2,894 sq. ft. Type 2 Restaurant constructed in 1984 through Building permits.

SURROUNDING LAND USES:

NORTH:

FLU Designation: Commercial High, with an underlying HR-8 (CH/8)
Zoning District: General Commercial (CG)
Supporting: Commercial (7-Eleven, Control No 1982-00097)

SOUTH:

FLU Designation: Commercial High, with an underlying HR-8 (CH/8)
Zoning District: General Commercial (CG)
Supporting: Commercial (Tires Plus, Control No 1983-00120)

EAST (across SR7/US 441):

FLU Designation: Commercial High, with an underlying HR-8 (CH/8)
Zoning District: General Commercial (CG)
Supporting: Commercial (Life Storage, Control No 1988-00047)

WEST:

FLU Designation: Commercial Recreation, with an underlying HR-8 (CR/8)
Zoning District: Residential Planned Unit Development (PUD)
Supporting: Residential (Twin Meadow Lakes, Control No 1992-00060)

FINDINGS:

Conditional Uses, Requested Uses and Development Order Amendments:

When considering a Development Order application for a Conditional, or a Development Order Amendment, the BCC and ZC shall consider Standards a – h listed in ULDC Article 2.B.7.B.2, Standards [Related to Conditional Uses]. The Standards and Staff Analyses are indicated below. A Conditional Use or Development Order Amendment which fails to meet any of these standards shall be deemed adverse to the public interest and shall not be approved.

- a. **Consistency with the Plan** – *The proposed use or amendment is consistent with the purposes, goals, objectives and policies of the Plan, including standards for building and structural intensities and densities, and intensities of use.*
 - Consistency with the Comprehensive Plan: The proposed use or amendment is consistent with the Goals, Objectives and Policies of the Comprehensive Plan, including previous Land Use Amendments, densities and intensities of use.
 - Prior Land Use Amendments: The site has been the subject of 1 previous County initiated Land Use Amendment, known as Commercial Categories 116a and 116b, which amended the land use from C/8 to CH/8, and was adopted via Ordinance 2001-087 with no conditions.
 - Intensity: The request for a total of 3,700 sq. ft. equates to a FAR of approximately 0.08 (3,700 / 44,590 surveyed sq. ft. or 1.0236 acres = 0.08). The maximum Floor Area Ratio (FAR) of 0.35 (w/o PDD) is allowed for a Commercial project with a CH FLU designation in the Urban Suburban Tier (44,590 surveyed sq. ft. or 1.0236 acres x 0.35 maximum FAR = 15,606.5 sq. ft. maximum).
 - Special Overlay District/ Neighborhood Plan/Planning Study Area: The site is not located within any neighborhood plans, overlays or plan study areas as identified in the Comprehensive Plan.

- b. **Consistency with the Code** - *The proposed use or amendment complies with all applicable standards and provisions of this Code for use, layout, function, and general development characteristics. The proposed use also complies with all applicable portions of Article 4.B, SUPPLEMENTARY USE STANDARDS.*

Type 1 Restaurants with less than 5,000 sq. ft. and no Drive-troughs, are permitted by right, but the proposed KFC Restaurant features a Drive-through, requiring Conditional use approval by the BCC. Staff has evaluated the request for a Conditional Use and it to be consistent with applicable standards and provisions of the Code, including the following elements:

- o Access: The Preliminary Site Plan (PSP) (Figure 4) indicates that the existing access point to the site will remain from a recorded access easement that lays north-south along the east property line of the subject site. Such easement provides access onto State Road 7 at the intersection of SW 18th Street and State Road 7, and at the access point from State Road 7 to the H.I.D. development . In addition the easement provides cross access to Twin Meadow Lakes Drive, which also connects to State Road 7.

o Landscape/Buffering: The site is currently developed with perimeter buffers. These buffers will be upgraded to meet current Code requirements, which will require the existing 5-ft. Compatibility buffers along the north and south property lines to be widened to 8-ft. (+ 3-ft.) Additionally, the 15-ft. wide Incompatibility buffer along the west side of the property line will be maintained adjacent to the existing 20-ft. wide utility easement, and will encroach 5 ft. into this easement for a total of 30 ft. of open space.

o Parking and Loading: 19 parking spaces are required and 24 are provided for the proposed Type 1 Restaurants with 57 seats (a minimum of 1 parking spaces per 3 seats). Additionally, a Type 1 Waiver (subject to administrative approval) to reduce the loading zone space, from 15 ft. x 55 ft. to 12 ft. x 45 ft., will be requested at time of final Development Review Officer approval. On preliminary review, Staff is in support of the reduction. In addition, the PSP indicates adequate continuous circulation throughout, and unobstructed pedestrian connection between uses.

o Architecture: The Applicant states that Architectural Elevations will be submitted at time of building permit for review for compliance with Article 5.C., Design Standards.

o Signs: The subject site has approximately 130 ft. of frontage, and a maximum of one freestanding sign is permitted for properties with 200 ft. or less of frontage, and one is proposed. Wall signs will be reviewed as part of the building permit application.

o Location Criteria: The ULDC limits Type 1 Restaurants with a Drive - through to a maximum of two uses within a 1,000 ft. of any intersection. There are two intersections within 1,000 ft. of the proposed use: the intersection State Road 7 and SW 18th Street, and the intersection of State Road 7 and Twin Meadow Lakes Drive. In addition to the proposed use, there are two other uses within these applicable intersections. However, there is only one other Type 1 Restaurant with a Drive-through within the intersections, as measured from these intersections to the exterior wall or outdoor dining area (Exhibit E).

c. Compatibility with Surrounding Uses – *The proposed use or amendment is compatible and generally consistent with the uses and character of the land surrounding and in the vicinity of the land proposed for development.*

Adjacent properties to the north and south of the subject site are developed with commercial uses, including a Mobil gas station to the north, which was recently approved by the BCC on May 23, 2019 for a Retail Gas and Fuel Sales with a Convenience Store, to allow for redevelopment of a new 7-Eleven; and, a Light Retail and Maintenance use (Tire Plus) to the south. With the exception of the properties located along the access point for the Twin Meadow Lakes residential development, properties to the north, south and east of the subject site and along State Road 7, are developed with commercial uses. Along the west side of the subject site, there are abutting residential lots that are part of the Twin Meadow Lakes development. The perimeter buffer for this residential development features a wall. Although the property will be redeveloped with the same previous use, the redeveloped site will introduce a Drive-through component. The Applicant states in the Justification statement, that a 30-foot setback open space separation will be maintained along the west side of the property adjacent to the affected residential lots. Staff has included a Condition of Approval to ensure the proposed spatial separation is maintained.

d. Design Minimizes Adverse Impact – *The design of the proposed use minimizes adverse effects, including visual impact and intensity of the proposed use on adjacent lands.*

In order to redevelop the site, the existing Compatibility Buffer width along the North and South sides of the property will be increased to eight feet. The Applicant also proposes to relocate the dumpster enclosure further east (out the required buffer), exceeding the 25 ft. minimum setback requirement (+5), and shifting the structure further away from residential development. Further, the required foundation planting along the west side of the building is proposed to be relocated along the west side of the loading area, providing additional screening from the residential development. Additionally, the existing 20-ft. utility easement that exists adjacent to the 15-ft. Incompatibility buffer along the west side of the property, will be maintained, providing additional open space and separation between the site and the residential development to the west. Such features, in addition to the landscape buffer material required by Code, will minimize adverse effects, including visual impact and intensity of the proposed uses on adjacent lands.

- e. **Design Minimizes Environmental Impact** – *The proposed use and design minimizes environmental impacts, including, but not limited to, water, air, storm water management, wildlife, vegetation, wetlands and the natural functioning of the environment.*

PALM BEACH COUNTY HEALTH DEPARTMENT: This project meets the Florida Department of Health requirements.

ENVIRONMENTAL RESOURCE MANAGEMENT COMMENTS:

VEGETATION PROTECTION: The site was previously developed as a restaurant.

WELLFIELD PROTECTION ZONE: The property is located within a Wellfield Protection Zone #4.

IRRIGATION CONSERVATION CONCERNS AND SURFACE WATER: All new installations of automatic irrigation systems shall be equipped with a water sensing device that will automatically discontinue irrigation during periods of rainfall pursuant to the Water and Irrigation Conservation Ordinance No. 93-3. Any non stormwater discharge or the maintenance or use of a connection that results in a non stormwater discharge to the stormwater system is prohibited pursuant to Palm Beach County Stormwater Pollution Prevention Ordinance No. 93-15.

ENVIRONMENTAL IMPACTS: There are no significant environmental issues associated with this petition beyond compliance with ULDC requirements.

- f. **Development Patterns** – *The proposed use or amendment will result in a logical, orderly and timely development pattern.*

The subject site was previously developed with a Type 2 Restaurant. The requested Conditional use for a Type 1 Restaurant with a Drive-through introduces a similar use, but maintains the same commercial pattern of development. Therefore, the pattern of the development will remain commercial and the proposed modification will not impact the established or anticipated development pattern within the vicinity.

- g. **Adequate Public Facilities** – *The extent to which the proposed use complies with Art. 2, F, Concurrency.*

ENGINEERING COMMENTS:

TRAFFIC IMPACTS

The proposed redevelopment of the site with high turn-over restaurant (Type 1 Restaurant) and fast food restaurant with drive-through (Type 1 Restaurant with drive-through) is expected to generate 539 net daily, 50 net AM and 33 net PM peak hour trips. The site currently has a high turn-over sit down restaurant (Type 2 Restaurant). Overall, the site is expected to generate 749 daily, 68 AM, and 50 PM peak hour trips. Build-out of the project is expected to be by 2022. Site access will not change from that of existing, which is existing on a service road that connects as the west leg of the intersection of SW 18th St and SR-7.

There are no improvements to the roadway system required for compliance with the Traffic Performance Standards since the project will have an insignificant impact on the roadways.

ADJACENT ROADWAY LEVEL OF SERVICE (PM PEAK)

Traffic volumes are in vehicles per hour

Segment: SR-7 from Lox Rd to SW 18th St

Existing count: Northbound=2386 , Southbound=2606

Background growth: Northbound=489, Southbound=534

Project Trips: Northbound=10, Southbound=10

Total Traffic: Northbound=2885 , Southbound=3150

Present laneage: 3 in each direction

Assured laneage: 3 in each direction

LOS “D” capacity: 2,680 per direction

Projected level of service: Worse than LOS D in both directions

At the time of approval by the Development Review Officer, (DRO) the Final Site Plan will be revised to add Type 1 Restaurant and Type 1 Restaurant with a Drive-through to the The Concurrency chart.

FIRE PROTECTION: The Fire Department Staff has reviewed this request and found no issues with the proposed project at this time.

SCHOOL IMPACTS: No Staff Review Analysis

PARKS AND RECREATION: This is a non-residential project. Therefore, Parks and Recreation Department ULDC standards do not apply.

h. Changed Conditions or Circumstances – *There are demonstrated changed conditions or circumstances that necessitate a modification.*

The subject site was initially developed with a Type 2 Restaurant use that is no longer in operation. The Applicant states in the Justification Statement that the existing building will be demolished and the site will be redeveloped with two proposed Type 1 Restaurants that will operate within a single 3,700 sq. ft. building.

CONCLUSION

Staff has evaluated the standards listed under Article 2.B. and determined that there is a balance between the need for change and the potential impacts generated by this change. Therefore, Staff is recommending approval of the request. Staff has also determined that any of the potential impact and incompatibility issues will be adequately addressed subject to the recommended Conditions of Approval as indicated in Exhibit C.

CONDITIONS OF APPROVAL

Class A Conditional Use

ALL PETITIONS

1. The approved Preliminary Site Plan is dated July 22, 2019. 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. 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 State Road 7, 200 feet, measured from the existing east right-of-way line of State Road 7 on an alignment approved by the FDOT and the 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)

SITE DESIGN

1. The minimum open space width along the west property line, inclusive of the required 15-foot wide Incompatibility Buffer, shall be a minimum of thirty (30) feet as depicted in the Preliminary Site Plan dated July 22, 2019, to ensure that spatial separation between the proposed development and the existing residential buildings is maintained. (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:

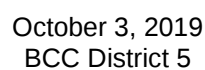
- a. The Issuance of a Stop Work Order; the Issuance of a Cease and Desist Order; the Denial or Revocation of a Building Permit; the Denial or Revocation of a Certificate of Occupancy; the Denial of any other Permit, License or Approval to any developer, owner, lessee, or user of the subject property; 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.

Zoning Commission
Application No. CA-2018-02131
(KFC/Pizza Hut Boca)



Zoning Commission
Application No. CA-2018-02131
(KFC/Pizza Hut Boca)

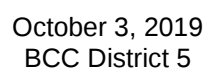


Figure 3 – Aerial



Exhibit D – Disclosures

DISCLOSURE OF OWNERSHIP INTERESTS – APPLICANT

[TO BE COMPLETED AND EXECUTED ONLY WHEN THE APPLICANT IS NOT THE OWNER OF THE SUBJECT PROPERTY]

TO: PALM BEACH COUNTY PLANNING, ZONING AND BUILDING EXECUTIVE DIRECTOR, OR HIS OR HER OFFICIALLY DESIGNATED REPRESENTATIVE

STATE OF FLORIDA
COUNTY OF PALM BEACH

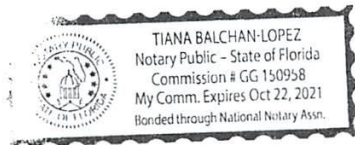
BEFORE ME, the undersigned authority, this day personally appeared David Wurster, hereinafter referred to as "Affiant," who being by me first duly sworn, under oath, deposes and states as follows:

- 1. Affiant is the [] individual or [☒] owner [position—e.g., president, partner, trustee] of Way John Inc. [name and type of entity - e.g., ABC Corporation, XYZ Limited Partnership], (hereinafter, "Applicant"). Applicant seeks Comprehensive Plan amendment or Development Order approval for real property legally described on the attached Exhibit "A" (the "Property").
- 2. Affiant's address is: 12124 Silver Fox Lane
Palm Beach Gardens, Fl 33418
- 3. Attached hereto as Exhibit "B" is a complete listing of the names and addresses of every person or entity having a five percent or greater interest in the Applicant. Disclosure does not apply to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.
- 4. Affiant acknowledges that this Affidavit is given to comply with Palm Beach County policy, and will be relied upon by Palm Beach County in its review of Applicant's application for Comprehensive Plan amendment or Development Order approval. Affiant further acknowledges that he or she is authorized to execute this Disclosure of Ownership Interests on behalf of the Applicant.
- 5. Affiant further acknowledges that he or she shall by affidavit amend this disclosure to reflect any changes to ownership interests in the Applicant that may occur before the date of final public hearing on the application for Comprehensive Plan amendment or Development Order approval.
- 6. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.
- 7. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct, and complete.

FURTHER AFFIANT SAYETH NAUGHT.


David Wurster, Affiant
(Print Affiant Name)

The foregoing instrument was acknowledged before me this 12 day of November
2018, by David Wurster, [☒] who is personally
known to me or [☐] who has produced _____
as identification and who did take an oath.





Notary Public

Tiana Balchan-Lopez
(Print Notary Name)

NOTARY PUBLIC

State of Florida at Large

My Commission Expires: 10/22/21

EXHIBIT "A"
PROPERTY

Parcel 1:
Lot 6, H.L.D. Plaza, according to the plat thereof. as recorded in Plat Book 46. Pages 5 and 6, of the Public Records of Palm Beach County. Florida.
Parcel 2:
Non-exclusive easement for ingress, egress and utilities for the benefit of Parcel 1, as set forth in that Easement recorded in Official Records Book 3787 Page 424 and in Official Records Book 3822 Page 944, and easements as shown at Plat Book 46, Pages 5 and 6, all of the Public Records of Palm Beach County, Florida.

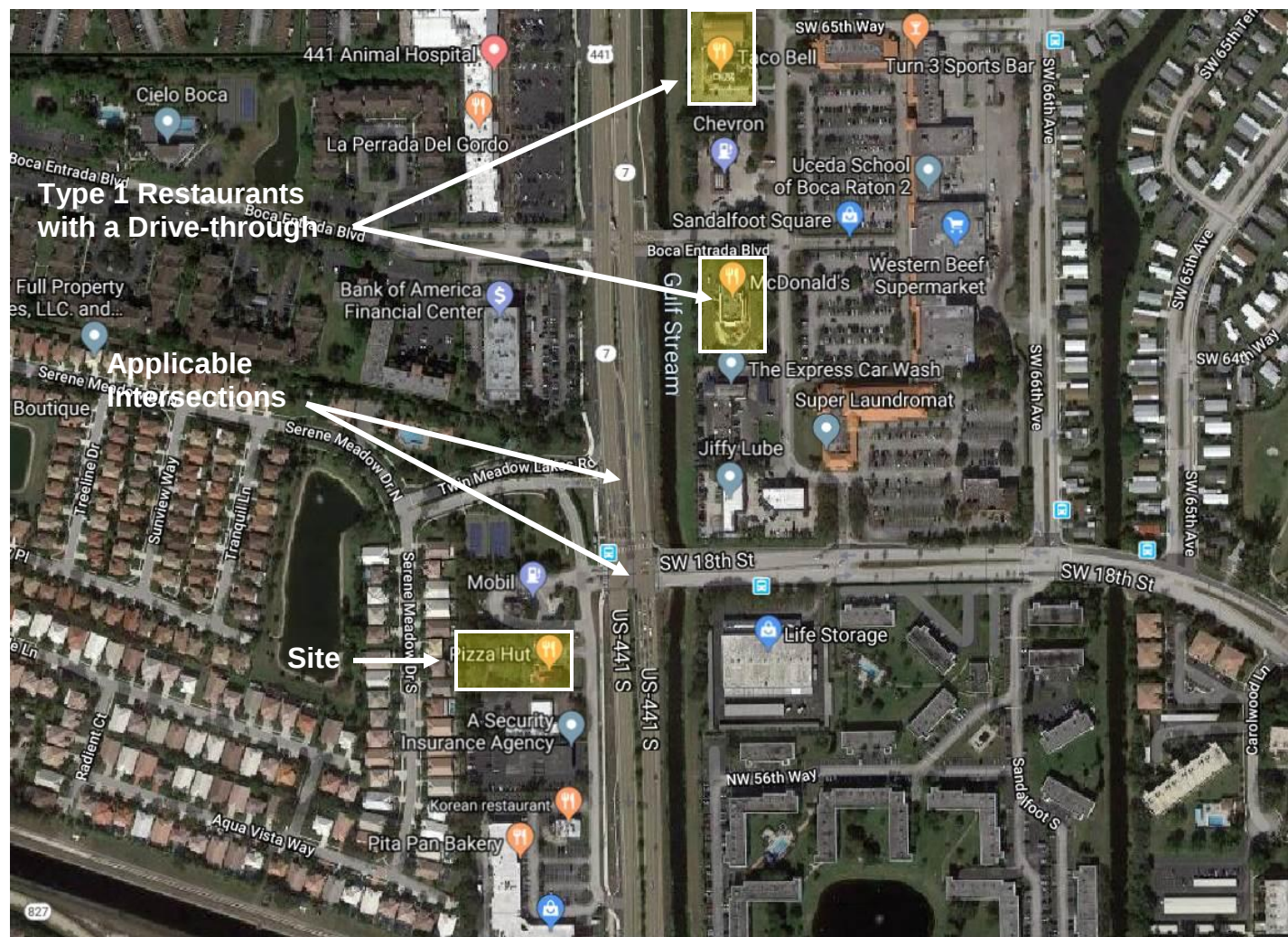
EXHIBIT "B"

DISCLOSURE OF OWNERSHIP INTERESTS IN APPLICANT

Affiant must identify all entities and individuals owning five percent or more ownership interest in Applicant's corporation, partnership or other principal, if any. Affiant must identify individual owners. For example, if Affiant is the officer of a corporation or partnership that is wholly or partially owned by another entity, such as a corporation, Affiant must identify the other entity, its address, and the individual owners of the other entity. Disclosure does not apply to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

Name	Address
Way John Inc.	1601 N Federal Hwy Boca Raton, Fl 33432

Exhibit E – Type 1 Restaurant with a Drive through Location Criteria – 1,000 ft. radius.



Type 1 Restaurants within 1000 ft. of applicable intersections.



1,000 ft. radius from State Road 7 and SW 18th Street



1,000 ft. radius from State Road 7 and Twin Meadows Drive

This page left blank intentionally