

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

**Application No.:** ZV/DOA/CA-2021-00407  
**Application Name:** Wharfside at Boca Pointe  
**Control No./Name:** 1973-00085 (Boca Pointe)  
**Applicant:** Boca Wharfside, LLC  
**Owners:** Boca Wharfside, LLC  
**Agents:** Gentile Glas Holloway O'Mahoney & Associates, Inc.  
 Dan Siemsen and Pat Lentini  
**Telephone No.:** (561) 575-9557  
**Project Manager:** James Borsos, Site Planner II

**TITLE:** a Type 2 Variance **REQUEST:** to reduce the side and rear setbacks. **TITLE:** a Development Order Amendment **REQUEST:** to modify the Site Plan; and, add square footage **TITLE:** a Class A Conditional Use **REQUEST:** to allow a Type 2 Restaurant in excess of 5,000 square feet.

**APPLICATION SUMMARY:** Proposed is a Type 2 Variance, Development Order Amendment (DOA) and two Class A Conditional Uses for the Wharfside at Boca Pointe development. The site is within a Commercial Pod of an existing Planned Unit Development (PUD), and supports 116,312 square feet (sq. ft.) of mixed commercial uses including Retail uses, Type 1 and 2 Restaurants, and a Medical Office.

The Applicant proposes to modify the Site Plan to add outdoor canopies at five restaurants (Building A, H, M, N, and 3). The proposed canopies will provide shelter to outdoor seating areas for these restaurants previously indicated on building permits, but not indicated on the Final Site Plan. Because they were indicated on prior building permits they were determined to be vested non-conforming for setback requirements; however, must be approved as an expansion of the use for compliance with concurrency and square footage requirements. The Applicant is seeking a Type 2 Variance to reduce the side and rear setbacks (0 ft. setback proposed) for three of the restaurant outdoor canopies (Building H, M, and Building 3).

Further, the Applicant has requested two Class A Conditional use approvals for two Type 2 Restaurants (Building A and Building 3) which exceed 5,000 sq. ft.

No additional site modifications are proposed with this development. No changes are proposed to the existing access point from SW 18<sup>th</sup> Street.

**SITE DATA:**

Location:	North side of SW 18th Street, approximately 300 feet east of Powerline Road.
Property Control Number(s):	00-42-47-34-25-001-0000
Existing Future Land Use Designation:	Medium Residential (MR-5)
Proposed Future Land Use Designation:	No Change
Existing Zoning District:	PUD
Proposed Zoning District:	No Change
Total Acreage:	10.03 acres
Affected Acreage:	10.03 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:	Boca Raton

**RECOMMENDATION:** Staff recommends approval of the requests, subject to the Conditions of Approval as indicated in Exhibits C-1 through C-4.

**PUBLIC COMMENT SUMMARY:** At the time of publication, Staff had received no contacts from the public regarding this application.

**PROJECT HISTORY:**

<b>Application No.</b>	<b>Request</b>	<b>Resolution</b>	<b>Approval Date</b>
1973-085	Official Zoning Map Amendment to rezone from the Agricultural District (AGR) to the Residential Single Family (RS) District and a Special Exception (SE) to allow a Planned Unit Development (PUD).	R-73-380	July 17, 1973
1973-085 (A)	Special Exception to amend the Master Plan, by relocation of open spaces, addition of dwelling units and deletion of dwelling units (overall reduction of 202 units) and addition of a guard gate at the north end of Via De Sonrisa Del Norte.	R-83-1032	September 13, 1983
1973-085 (B)	Special Exception to amend the Master Plan to change the designation of Tract R from civic to residential, increase the density and permit 35 Category A dwelling units.	R-89-1153	June 13, 1989
1973-085 (C)	Amendment to the Master Plan to permit a Nursing Home (60 beds max) and a Type III CLF (616 beds max).	R-89-1154	June 13, 1989
1973-085 (D)	Modification of Commission requirements (aka Conditions of Approvals) for Tract R and increase the number of units.	R-90-516	March 27, 1990
1973-085 (E)	Modification of Commission requirements (aka Conditions of Approvals) for Condition 14 (walls and berms) for Tract R	R-91-237	February 26, 1991
DOA-2006-1371	Amendment to the Master Plan to re-designate a portion of Pod D land use (residential to civic), add two access points to newly created Pod D2, and modify conditions of approval.	R-2007-004	January 4, 2007
DOA-2013-01334	Amendment to the Master Plan to modify and re-designate land area, and add units in the Residential Single Family/Special Exception (RS/SE) Zoning District on Tract Y-2.	R-2013-1254	September 27, 2013
ZV/DOA/R-2013-01069	Amendment to reconfigure the Master Plan and Site Plan to add a new use; and, add square footage to the Site Plan	R-2013-1521	October 24, 2013
ZV/DOA/R-2013-01069	To allow a Type I Restaurant	R-2013-1522	October 24, 2013
ZV/DOA/R-2013-01069	Type II variance to allow an increase in height and sign face area for a Freestanding Sign, decrease the number of queuing spaces and parking spaces; and, a reduction in width of landscape islands	ZR-2013-027	October 24, 2013
CA/DOA/W-2018-00218	Class A Conditional Use to allow an Electrical Transmission Line and Substation Full Array Urban Communication Tower	R-2019-0005	January 8, 2019
CA/DOA/W-2018-00218	Amendment to the Master Plan to add an Electrical Transmission Line and Substation Full Array Urban Communication Tower	R-2019-0006	January 8, 2019
CA/DOA/W-2018-00218	Type 2 Waiver to allow a reduction of Setback and Separation for a Communication Tower	R-2019-0007	January 8, 2019

**SURROUNDING LAND USES:**

**NORTH:**

FLU Designation: Medium Residential (MR-5)  
 Zoning District: Residential Planned Unit Development (PUD)  
 Supporting: Water Tract (Boca Pointe, Control No. 1973-85)

**SOUTH (across SW 18<sup>th</sup> Street):**

FLU Designation: Medium Residential (MR-5)  
 Zoning District: Residential Planned Unit Development (PUD)  
 Supporting: Residential (Boca Pointe, Control No. 1973-85)

**EAST:**

FLU Designation: Medium Residential (MR-5)  
 Zoning District: Residential Planned Unit Development (PUD)  
 Supporting: Water Tract (Boca Pointe, Control No. 1973-85)

**WEST:**

FLU Designation: Medium Residential (MR-5)  
 Zoning District: Residential Planned Unit Development (PUD)  
 Supporting: Water Tract (Boca Pointe, Control No. 1973-85)

**TYPE 2 VARIANCE SUMMARY:**

#	ULDC Article	REQUIRED	PROPOSED	VARIANCE
V.6	Table 3.E.2.D. Commercial Pod – CC Table 3.D.1.A	Rear Setback 30 ft.	Building H – 0 ft. Building 3 – 0 ft. (for approximately the eastern 22 ft. of north property line)	-30 ft. (100 percent)
V.7	Table 3.E.2.D Commercial Pod – CC Table 2.D.1.A	Side Setback 30 ft.	Building M – 0 ft.	-30 ft. (100 percent)

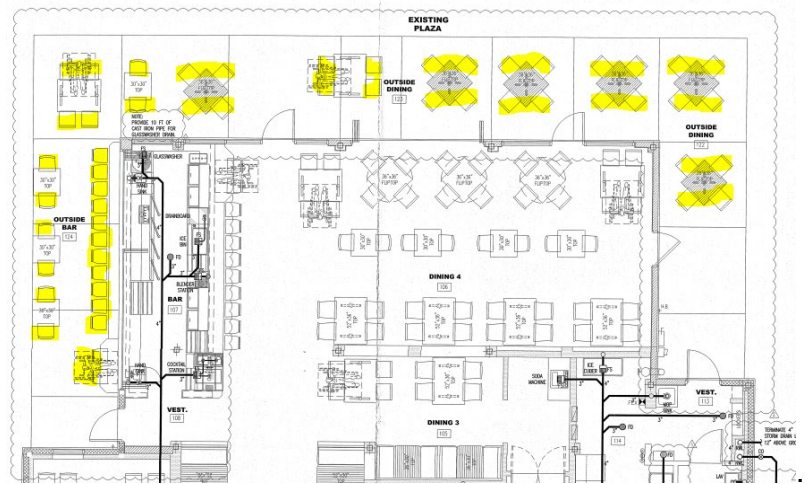
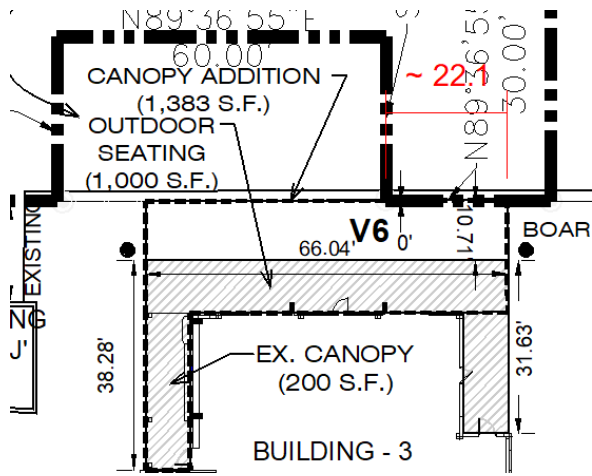
**FINDINGS:** Type 2 Variance Standards: When considering a Development Order application for a Type 2 Variance, the Zoning Commission shall consider Standards a through g listed under Article 2.B.7.E.6, Standards for Zoning or Subdivision Variance. The Standards and Staff Analyses are as indicated below. A Type 2 Variance that fails to meet any of these Standards shall be deemed adverse to the public interest and shall not be approved.

- a. ***Special conditions and circumstances exist that are peculiar to the parcel of land, building, or structure, that are not applicable to other parcels of land, structures, or buildings in the same district:***

**V.6 and V7: Yes.** There are special conditions and circumstances that exist with the subject site. The request is to allow the addition or the enlargement of outdoor canopy areas to protect alfresco seating areas at existing five Type 2 restaurants (Buildings A, H, N, M and 3). The subject variances requested are for Buildings H, M and 3. The required rear and side setback for the structure and canopies (that have structural supports other than by the wall in which they are attached) is 30 feet. These buildings exist, and are legal non-conforming, with less than 30 foot setbacks. The requests are to have zero side and rear setbacks specifically for the proposed canopies in order to cover outdoor seating that was previously approved in building permits, prior to 2017 adoption of Ordinance 2017-029, Use Regulations. The reference to this Ordinance is relevant for the outdoor seating described in those permits. Prior to this ordinance outdoor seating did not have a setback requirement. Following the adoption of this ordinance all new outdoor seating must meet the required setbacks of the principal structure, and variances are not permissible.

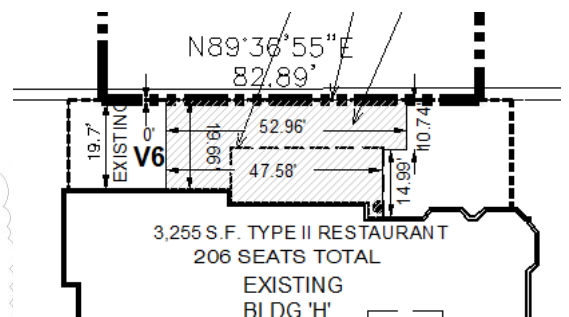
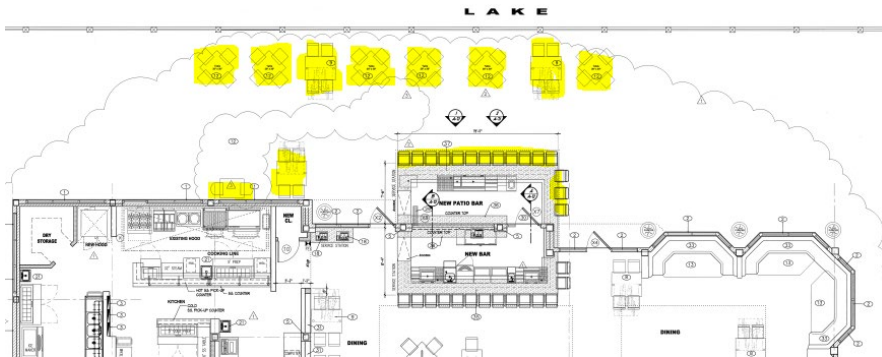
With the adopted code change, a special circumstance exists for the three buildings and uses to allow the vested outdoor seating areas to be covered and protected from the weather. Building 3 was approved for a Type 2 Restaurant pursuant to Building Permit B-2016-017092. The proposed canopy will be at the rear of the structure and has a zero ft. setback to the north (for approximately 22 ft. of

east side of proposed canopy) as shown in the figure below. This canopy will cover the existing 53 seats that are indicated in that building permit, of which 20 seats are within the 30 foot setback.

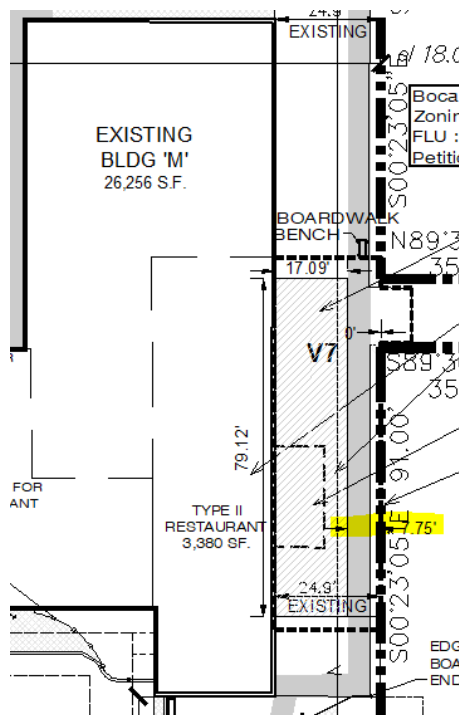
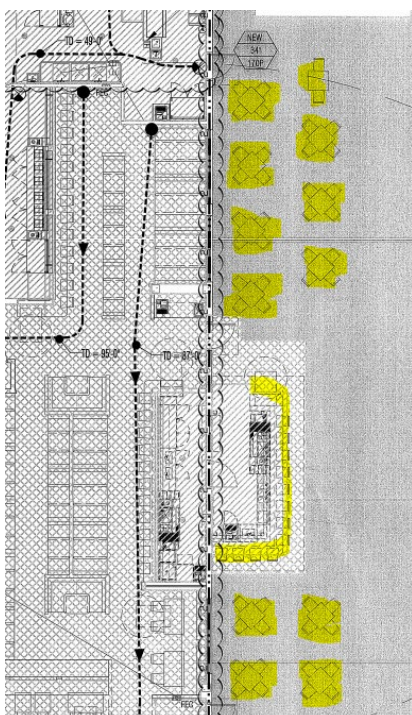


These seats shall be limited to what is indicated within this permit and located in the hatched area with a 10.71 foot setback.

To the east of Building 3 is existing Building H. This restaurant was established pursuant to Building Permit B-2014-12593 and was previously approved through the Zoning Agency Review processes (ZAR) that allowed a 240 sq. ft. canopy and outdoor seating area. The Applicant is proposing an expansion of the canopy to cover the seating previously indicated, but did not have a canopy protecting those seats. Thirty-two seats, or eight tables of four are located at the zero setback with the remaining seats adjacent to the building (total of 53 seats outside). The canopy will also have a zero ft. setback to the north property line.



Last, Building M, located south and east of Building H, proposes to have a zero foot side setback for a proposed canopy to cover existing seating that was indicated within Building Permit B-2017-07267.



The existing 59 seats approved in the permit shall be located as indicated in the permit with the 7.75 foot setback from the property line. A Condition of Approval for this amendment requires a modification to the notation that the maximum seating is 59 seats and not 96.

These businesses are located adjacent to a 21-acre aquatic feature (Buttonwood Lake, Tract W-5) internal to the Boca Pointe PUD on the north, east and west sides of the affected area. The existence of a water body adjacent to an outdoor dining setting is conducive to providing a pleasant atmosphere preferable

to many restaurant patrons versus indoor dining. As such, protection from the elements is desirable and the canopies do not directly abut other commercial or residential uses or buildings.

**b. *Special circumstances and conditions do not result from the actions of the Applicant:***

**V.6 and V7: Yes.** There are special conditions and circumstances that exist with the subject site that do not result from the actions of the Applicant. As previously indicated, outdoor seating spaces within the building setback areas for three restaurants (Buildings H, M, and 3) were provided through the building permit process prior to 2017. Outside seating for dining enjoyment is a common practice and often requested by restaurant patrons. There are building permits issued between 2014-2017 for Buildings H, M, and 3 that approved outdoor seating areas within the 30-ft. setback area. Not all of those areas were approved with canopies at that time and featured a combination of covered and uncovered seating (Building H – 53 seats, 15 covered; Building M – 59 seats, 12 covered; Building 3 – 53 seats, 0 covered). The outdoor seating and canopies are adjacent to water with no immediate impact to adjacent properties. The Applicant desires additional protection of all outdoor dining areas. The requested variances are for the canopy structures only to shelter previously approved outdoor dining areas. The proximity to a large water body is also a special circumstance and condition, which mitigates impact of the structures on, adjoin properties.

**c. *Granting the Variance shall not confer upon the Applicant any special privilege denied by the Plan and this Code to other parcels of land, buildings, or structures, in the same district:***

**V.6 and V7: Yes.** Granting of the Variance does not confer any special privilege denied by the Comprehensive Plan and the Unified Land Development Code (ULDC) to other parcels of land, buildings, or structures, in the same Zoning district. The site is within the Commercial Pod of the Boca Pointe PUD and is approved as a PUD with a MR5 Land Use Designation. The ULDC provides the opportunity for properties to request variances from Article 3 of the Code if the requirements cannot be met. Outdoor seating is permitted in the Code and must meet the Property Development Regulations (PDR) setbacks pursuant to Article 4. The location of outdoor seating at three restaurants (Building H, M and 3) in the Commercial Pod was previously approved based upon building permits issued between 2014 - 2017 (Please see Figure 4) when uses were not limited within setback areas, prior to the adoption of ULDC Supplement No. 21. The seating areas that were not on the buildings permits cannot be expanded under current requirements, and the Type 2 Variance request is only for canopy structures in the setback areas.

**d. *Literal interpretation and enforcement of the terms and provisions of this Code would deprive the Applicant of rights commonly enjoyed by other parcels of land in the same district, and would work an unnecessary and undue hardship:***

**V.6 and V7: Yes.** The site is very unique as there is a separate tract (W-5) comprised solely of a large water body that surrounds the affected area on three sides. The request is to allow the addition and expansion of existing canopies to provide full protection to restaurant patrons at vested outdoor seating areas. Some of the outdoor seating areas and canopies were approved through the building permit process but not all seating areas had approved canopies. Now, the Applicant desires to provide additional protection for these dining areas. Denial of the variance would work an unnecessary and undue hardship as the canopies provide reasonable protection from the elements. These restaurants are located on the site so that they look overlook a large water body located at the rear and east side of the project. This setting is conducive to providing a pleasant outdoor seating environment preferable to patrons.

**e. *Granting the Variance is the minimum Variance that will make possible the reasonable use of the parcel of land, building, or structure:***

**Yes.** The Variance is to reduce setbacks for the canopies that are proposed to be provided between the existing structures and the lake. The subject site was previously approved for outdoor dining areas within these areas through building permits, but had not shown these approved locations on a current Site Plan. While the outdoor dining area was approved prior to 2017 when the Code was revised to require that Outdoor Dining Areas be setback the same distance of the principal structure, the canopy that provides protection for those areas are subject to the same setback requirements, and as such these Variances are a requirement. The canopies provide weather protection for those restaurant patrons, and will allow these outdoor seating areas to be used year round along with expanded covered walkway areas. As the outdoor seating areas are permitted with 0 setback, the

Variances to allow for the canopies is the minimum Variance possible to allow for the continued use of these areas.

**f. Grant the Variance will be consistent with the purposes, goals, objectives, and policies of the Plan and this Code:**

**Yes.** Granting the Variance will be consistent with the purposes, goals, objectives, and policies of the Comprehensive Plan and the ULDC. The requested variance is the minimum necessary to allow reasonable use of the property that will not create any adverse impacts on surrounding uses. This request resolves a previously approved non-conformity on the site as there currently exists canopies within the 30-ft. rear and side setback areas.

**g. Granting the Variance will not be injurious to the area involved or otherwise detrimental to the public welfare:**

**Yes.** The granting of this variance will not be injurious to the area or otherwise detrimental to the public welfare. As stated above, this request resolves a previously approved non-conformity on the site. These businesses are located on the site in such a way that they look out onto a large lake on the rear and both sides of the Commercial Pod. This setting is conducive to providing a pleasant outdoor seating environment preferable to many diners. Actually instead of being injurious to the area or detrimental to the public welfare, the approval of this variance would actually be quite the opposite, as it would provide more protection.

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**FINDINGS:** The following Staff analysis is provided for the requested Development Order Amendment and the two, Class A Conditional Use requests for a Type 2 Restaurant in excess of 5,000 sq. ft.

Class A Conditional Use and Development Order Amendment: When considering a Development Order Amendment and a Class A Conditional Use, the BCC and ZC shall utilize the Standards a – h listed in Article 2.B.7.B, Standards. The Standards and Staff Analyses are indicated below. A Conditional Use, Rezoning to PDD or TDD, or Development Order Amendment that 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.**

**PLANNING DIVISION COMMENTS:**

○ *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 not been the subject of a prior land use amendment.

○ *Intensity:* The request proposes a 350 square foot increase in non-residential square footage from the currently approved 119,500 square feet to 119,850 square feet. The maximum Floor Area Ratio (FAR) for non-residential development in the Medium Residential, 5 units per acre (MR-5) Future Land Use designation within the Urban Suburban Tier is 0.45 FAR. This application proposes an FAR of 0.26 (115,479 sq. ft. (excludes all outdoor dining and canopy areas) / 10.025 ac. or 436,701 sq. ft. = 0.264 or 0.26), and is therefore below the maximum FAR allowed on the site.

○ *Special Overlay District/Neighborhood Plan/Planning Study Area:* The site is not located within any neighborhood plans, overlays or planning study areas as identified in the Comprehensive Plan.

**b. Consistency with the Code - The proposed amendment is not in conflict with any portion of this Code, and is consistent with the stated purpose and intent of this Code.**

○ *Development Order Amendment:* The Applicant is requesting to modify the Site Plan to add Outdoor Dining areas that were previously permitted through the Building Permit review process, but had not been updated on the Site Plan, as well as add and expand canopies for five buildings. The

following provides a breakdown of approved, but not previously shown (on the Site Plan) Outdoor Dining Areas:

	<u>Existing/Approved</u>	<u>Proposed</u>
Building A:	145 sq. ft.	450 sq. ft. (+305 sq. ft.)
Building H:	240 sq. ft.	1,104 sq. ft. (+864 sq. ft.)
Building M:	248 sq. ft.	1,354 sq. ft. (+1,106 sq. ft.)
Building N:	0 sq. ft.	463 sq. ft. (+463 sq. ft.)
Building 3:	200 sq. ft.	1,000 sq. ft. (+800 sq. ft.)
Total:	833 sq. ft.	4,371 sq. ft. (+3,538 sq. ft.)

These Outdoor Dining Areas did not previously receive concurrency approval, and as such are considered additional square footage.

In addition, the Applicant is requesting to expand canopies for the above noted five buildings. Four of the five canopies (not including Building A), are subject to Code Enforcement Violations for construction without a permit.

With regards to the Outdoor Dining Areas, prior to 2017 (Ordinance 2017-028), the Code did not consider these areas when associated with a Type 2 Restaurant within an MUPD to be part of the overall principal use, and as such were not required to meet the setback requirements for a principal use. Although the setback requirements for the principal use were not required, the Site Plan should have been modified at the time of Building Permit review for the outdoor dining areas to update the Site Plan and receive concurrency approval. Staff noted the discrepancies while completing a site visit and the Applicant has modified the Plans to accurately reflect existing and approved site conditions, as well as identify the location for expanded and new canopies being proposed. There was also discrepancies with the Site Data on the approved Site Plan, in which total square footage for the uses differed from the Buildings shown on the plans. Through work with the Applicant, Staff can confirm that the approved square footage is now accurate. The Development Order Amendment to modify the Site Plan and add square footage meets Code requirements, with exception to the requested Variances.

- *Class A Conditional Use – Type 2 Restaurant over 5,000 sq. ft.:* The request for two, Type 2 Restaurants in excess of 5,000 sq. ft. must be approved as a Class A Conditional Use in accordance with Art. 2. Building A features an existing 5,975 sq. ft. restaurant, with a proposed 450 sq. ft. Outdoor Dining area. There is a second Type 2 Restaurant (Building 3) with an interior area of 4,000 sq. ft., and an outdoor seating area of 1,000 sq. ft., which was previously approved through the building permit process. Outdoor Dining Areas are reviewed as an extension of the principal use (Type 2 Restaurant), and as such, the outdoor seating area square footage needs to be added to the Restaurant.

- *Type 2 Variance:* The Variance requests are for reduced setbacks for outdoor canopy structures that are provided over existing Outdoor Dining areas. There are existing canopies at three locations (Buildings H, M, and 3) that were previously approved through the building permit process, but were expanded without site plan approval. Those canopies encroach into the required 30-ft. rear and side setback requirements. Now the Applicant desires to have those nonconformities approved through the site plan process in addition to an expansion of those structures to a 0-ft. rear (Building H and 3) and side setback (Building M). Staff are supportive of the Variance requests, as identified above.

- *Property Development Regulations:* The current Code requires both a 30-ft. rear and 30-ft. side setback for structures. The expansion of three outdoor canopy are proposed to extend to a 0-ft. rear and 0-ft. side setback dimension to provide full protection to restaurant patrons within existing seating areas that are not expanding to those limits. The canopy at Building A meets the 30-ft. rear setback requirement and does not require a Variance approval. Staff are recommending a Condition of Approval to limit Outdoor Dining areas and the seating provided to what has been previously approved through the associated plans and Building Permits. By doing so, the Outdoor Dining Areas would not be able to expand a non-conformity. The Applicant has indicated they are supportive of this restriction.

- *ULDC Article 4:* The ULDC does not allow variances to the Use Regulations. The Applicant is

not proposing a use variance to Article 4 to expand the outdoor seating areas further than previously approved through the building permit process.

- *Parking:* There are no revisions to parking as part of this request and the site continues to meet the parking requirements for an MUPD development. As indicated on the Site Plan, a total of 490 parking spaces will continue to serve the Commercial Pod.
- *Signage:* There are no revisions to signage as part of this request.
- *Landscaping and Buffering:* There are no revisions to landscaping or buffering as part of this request. The PSP indicates a 20 ft. R-O-W buffer along SW 18<sup>th</sup> Street. No landscape buffering has been provided along the east, west, and north perimeter as it is adjacent to the existing lake.

**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.***

The subject site was originally developed as the Commercial pod of a PUD with a mix of Retail, Restaurant, and Office uses, in July 1973. The site is surrounded on three sides by a 21-acre water tract and on the south by SW 18<sup>th</sup> Street. The proposed use and structures will not create any incompatibility issues with the surrounding property and uses as the site was previously developed with a commercial use. The proposed location of the outdoor canopies will be internal to the PUD, with little to no visual impacts on residential lands. The lake provides sufficient buffering along the north, east and west property lines to existing residential homes. Further, the approval of the Class A Conditional Uses for the two, Type 2 Restaurants will allow the existing restaurants to be maintained, and meet existing Code requirements.

**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.***

As previously described, the affected area abuts a 21-acre lake tract within the PUD to the north, east, and west. The DOA and Class A Conditional uses does not alter previously approved building placement, building height, or result in significant modification of the site. The proposed Class A Type II restaurants are internal to the Commercial pod and their outdoor seating areas are oriented to the north facing the large lake. The amendment will not result in adverse impact to the previously approved uses, adjacent lands, or surrounding community.

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

As the proposed addition and expansion to canopies and uses within the setback areas have no impact on existing vegetation on-site, no Staff review analysis is required by Environmental Resources Management (ERM) Staff.

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

The proposed amendment will result in a logical, orderly and timely development pattern. Although there is the addition and expansion of existing outdoor canopies and the concurrency approval for the Outdoor Dining areas, the Applicant will not be seeking to increase the capacity of outdoor seating from that already approved. There are five restaurants that are seeking approval for outdoor canopies, three of which either are requesting a rear or side setback variance, from the 30 ft. requirement.

After analyzing the proposed amendment, Staff agrees that the increase in square footage for the five buildings will not have a significant increase of impact from what was previously approved, and will maintain a logical, orderly, and timely development pattern.

**g. Adequate Public Facilities – *The proposed amendment complies with Art. 2.F, Concurrency (Adequate Public Facility Standards).***



ENGINEERING COMMENTS:

There are no proposed Engineering conditions of approval at this time.

PALM BEACH COUNTY HEALTH DEPARTMENT:

This project has met the requirements of the Florida Department of Health.

FIRE PROTECTION:

Staff has reviewed this application and have no comment.

SCHOOL IMPACTS:

The School Board has no comment regarding this non-residential application.

PARKS AND RECREATION:

This is a non-residential project, therefore Parks and Recreation Department ULDC requirements do not apply.

- h. Changed Conditions or Circumstances** – *There are demonstrated changed site conditions or circumstances provided by the Applicant's Justification Statement that necessitate the amendment.*

The subject site was developed 48 years ago in 1973. The demographic, population, uses, and the ULDC have considerably changed over this time, and infill redevelopment is encouraged by the Code and the Comprehensive Plan. In 2013, the BCC last approved a Development Order Amendment, although there have been a number Zoning Administrative Reviews (ZAR), minor in nature, since that time.

The proposed amendment is based on an already approved Plan. With this request, the Applicant is looking to adapt already approved restaurant uses to the new trend in al fresco dining by providing an outdoor seating option for restaurant patrons. No additional seating is requested through this application, and the expansion to the outdoor canopies will provide necessary weather protection to the outdoor dining areas.

**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 are recommending approval as per the Conditions of Approval in Exhibits C-1 through C-4.

## CONDITIONS OF APPROVAL

### EXHIBIT C-1: Type 2 Variance - Concurrent

#### ALL PETITIONS

1. The approved Preliminary Site Plan is dated October 25, 2021. 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)

#### VARIANCE

1. At time of application for a Building Permit, the Property Owner shall provide a copy of this Variance approval along with copies of the approved Plan to the Building Division. (BLDGPM: BUILDING DIVISION - Zoning)

#### COMPLIANCE

1. In Granting this Approval, the Zoning Commission 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.

## CONDITIONS OF APPROVAL

### EXHIBIT C-2: Development Order Amendment

#### ALL PETITIONS

1. Previous ALL PETITIONS Condition 1 of Resolution R-2013-1521, Control No.1973-00085, which currently states:

All previous conditions of approval applicable to the subject property, as contained in Resolutions R-73-380 (Control No. 1973-085), R-83-1032 (Control No. 1973-085(A)), R-89-1153 (Control No. 1973-085(B)), R-89-1154 (Control No. 1973-085(C)), R-90-516 (Control No. 1973-085(D)), R-91-237 (Control No. 1973-085(E)), and R-2007-0004 (Control No. 1973-085), shall remain in effect unless expressly modified 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)

#### Is hereby amended to read:

All previous conditions of approval applicable to the subject property, as contained in Resolutions R-73-380 (Control No. 1973-085), R-83-1032 (Control No. 1973-085(A)), R-89-1153 (Control No. 1973-085(B)), R-89-1154 (Control No. 1973-085(C)), R-90-516 (Control No. 1973-085(D)), R-91-237 (Control No. 1973-085(E)), R-2007-0004 (Control No. 1973-085), ZR-2007-018 (Control No. 1973-085), R-2013-1254 (Control No. 1973-00085), R-2013-1522 (Control No. 1973-00085), R-2019-0005 (Control No. 1973-00085), R-2019-0006 (Control No. 1973-00085), and R-2019-0007 (Control No. 1973-00085), shall remain in effect unless expressly modified 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 PETITIONS Condition 2 of Resolution R-2013-1521, Control No.1973-00085, which currently states:

The Conditions of Approval as contained herein shall apply to Tract T-2 of the Commercial Pod only (the Affected area of Application ZV/DOA/R-2013-1069), unless expressly stated. The approved Preliminary Master Plan is dated August 15, 2013. 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 ULDC, must be approved by the Board of County Commissioners.

#### Is hereby amended to read:

The Conditions of Approval as contained herein shall apply to Tract T of the Commercial Pod only (the Affected area of Application ZV/DOA/CA-2021-00407), unless expressly stated. The approved Preliminary Site Plan is dated October 25, 2021. 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 (ULDC), must be approved by the Board of County Commissioners. (ONGOING: ZONING - Zoning)

3. Previous ALL PETITIONS Condition 3 of Resolution R-2013-1521, Control No.1973-00085, which currently states:

Development of Tract T-2 is limited to the uses and/or site design approved by the Board of County Commissioners. The approved Preliminary Site Plan is dated August 15, 2013 and the approved Preliminary Regulating Plan is dated July 18, 2013. All modifications to the Development Order must be approved by the Board of County Commissioners or Zoning Commission, unless the proposed changes are required to meet Conditions of Approval. (DRO: ZONING - Zoning)

#### Is hereby amended to read:

Development of Tract T is limited to the uses and/or site design approved by the Board of County Commissioners. The approved Preliminary Site Plan is dated October 25, 2021 and the approved Preliminary Regulating Plan is dated July 18, 2013. All modifications to the Development Order must be approved by the Board of County Commissioners or Zoning Commission, unless the proposed changes are required to meet Conditions of Approval. (DRO/ONGOING: ZONING - Zoning)

### **ARCHITECTURAL REVIEW**

1. At time of submittal for Final Approval by the Development Review Officer (DRO), the Architectural Elevations for the retail buildings shall be submitted for review and approval by the Zoning Division. Architectural Elevations shall comply with the standards indicated in Article 5.C of the Unified Land Development Code (ULDC). Development shall be consistent with the approved Architectural Elevations, the DRO approved Final Plan, all applicable Conditions of Approval, and all ULDC requirements. (DRO: ZONING - Zoning) [Note: COMPLETED] (Previous ARCHITECTURAL REVIEW Condition 1 of Resolution R-2013-1521, Control No.1973-00085)

### **ENGINEERING**

1. The Property Owner shall fund the cost of signal installation if warranted as determined by the County Engineer at SW 18th St and Project Entrance. Signalization shall be a mast arm structure installation. The cost of signalization shall also include all design costs and any required utility relocation and right of way or easement acquisition.

a. The Property Owner shall provide acceptable surety to the Traffic Division in an amount as determined by the Director of the Traffic Division by April 30, 2014. (DATE: MONITORING - Engineering) [Note: COMPLETED]

b. In order to request release of the surety for the traffic signal at the above intersection, the Property Owner shall provide written notice to the Traffic Division stating that the final certificate of occupancy has been issued for this development and requesting that a signal warrant study be conducted at the intersection. The Traffic Division shall have 24 months from receipt of this notice to either draw upon the monies to construct the traffic signal or release the monies. In the event that the property is sold, the surety may be returned once the Traffic Division receives written documentation of the sale and a replacement surety has been provided to the Traffic Division by the new Property Owner. (ONGOING: ENGINEERING-Eng) (ONGOING: ENGINEERING - Engineering) (Previous ENGINEERING Condition 1 of Resolution R-2013-1521, Control No.1973-00085)

2. 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, 2018. 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-Eng) (DATE: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 2 of Resolution R-2013-1521, Control No.1973-00085)

3. Prior to issuance of a Certificate of Occupancy for Wharfside at Boca Pointe, the Property Owner shall legally create the lot in accordance with Article 11 of the Unified Land Development Code. Creation of the legal lot shall apply to both Tract W-5 in P.B. 46, PG. 123 and Tract T-2 in P.B. 43, PG. 194 to reflect the current property line. (CO: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 3 of Resolution R-2013-1521, Control No.1973-00085)

### **PLANNED DEVELOPMENT**

1. Prior to issuance of a Certificate of Completion for Building 1 or Building 2, Buildings E, F, and L shall be demolished and the Demolition Permits completed. (CC: BUILDING DIVISION - Zoning) [Note: COMPLETED] (Previous PLANNED DEVELOPMENT Condition 1 of Resolution R-2013-1521, Control No.1973-00085)

### **SITE DESIGN**

1. Previous SITE DESIGN Condition 1 of Resolution R-2013-1521, Control No.1973-00085, which currently states:

The site shall be limited to a maximum of 119,500 square feet. (ONGOING: ZONING - Zoning)

**Is hereby amended to read:**

The site shall be limited to a maximum of 119,850 square feet. (ONGOING: ZONING - Zoning)

2. Prior to Final Development Review Officer Approver, the Applicant shall modify the Master Plan to reflect the correct Commercial Pod square footage as indicated on the Site Plan. (DRO: ZONING - Zoning)

**USE LIMITATIONS**

1. Outdoor seating for Buildings 3, H and M shall be limited to the following:
  - Building 3 and H: Maximum of 53 outdoor seats; and,
  - Building M: Maximum of 59 outdoor seats.

Prior to final approval by the Development Review Officer, the Site Plan shall be modified to indicate the number of seating for these 3 buildings. (DRO/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.

## CONDITIONS OF APPROVAL

### EXHIBIT C-3: Class A Conditional Use (Building A)

#### ALL PETITIONS

1. The approved Site Plan is dated October 25, 2021. 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)

#### 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.

## CONDITIONS OF APPROVAL

### EXHIBIT C-4: Class A Conditional Use (Building 3)

#### ALL PETITIONS

1. The approved Site Plan is dated October 25, 2021. 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)

#### 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.

Figure 1 - Land Use Map

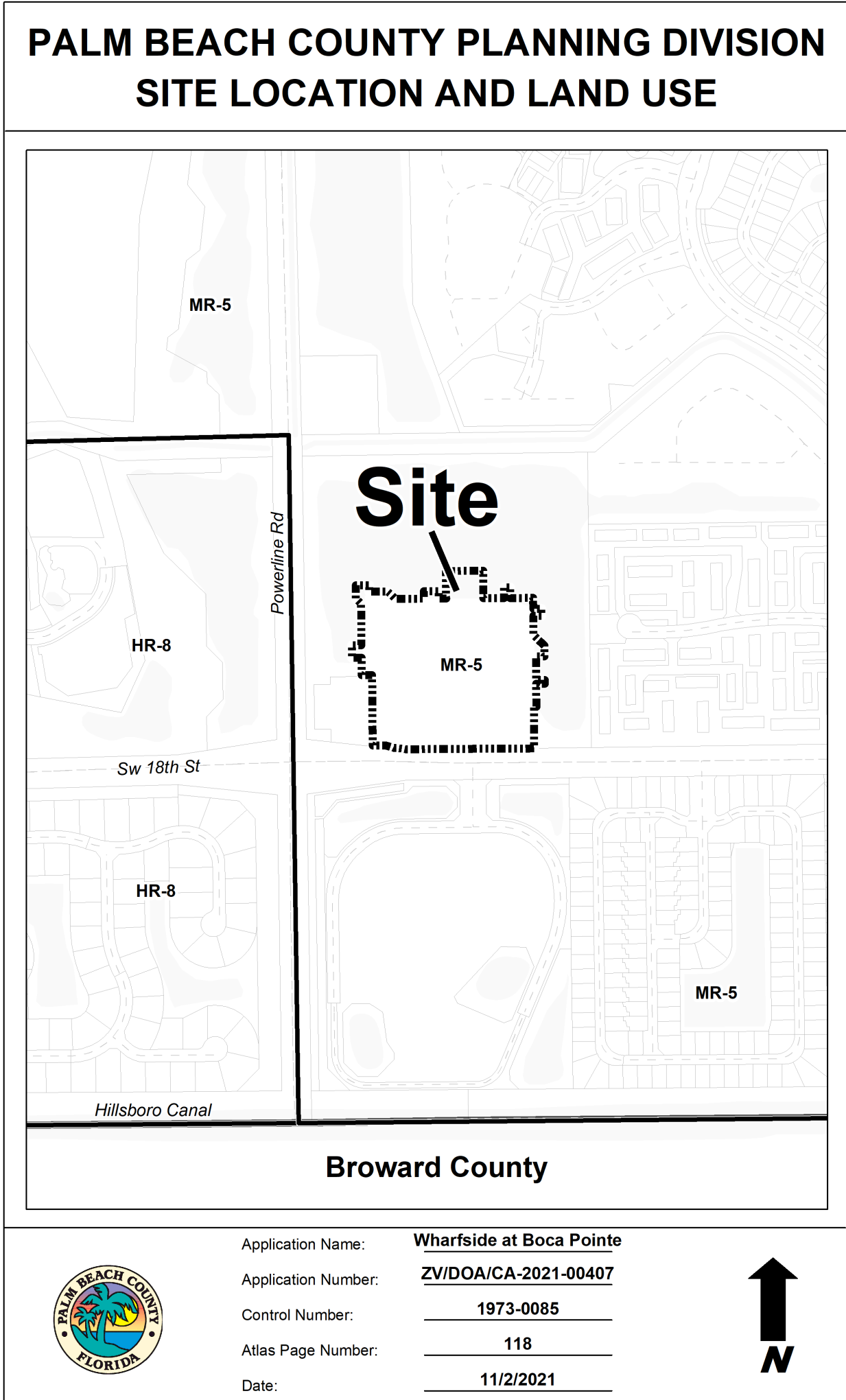




Figure 2 - Zoning Map

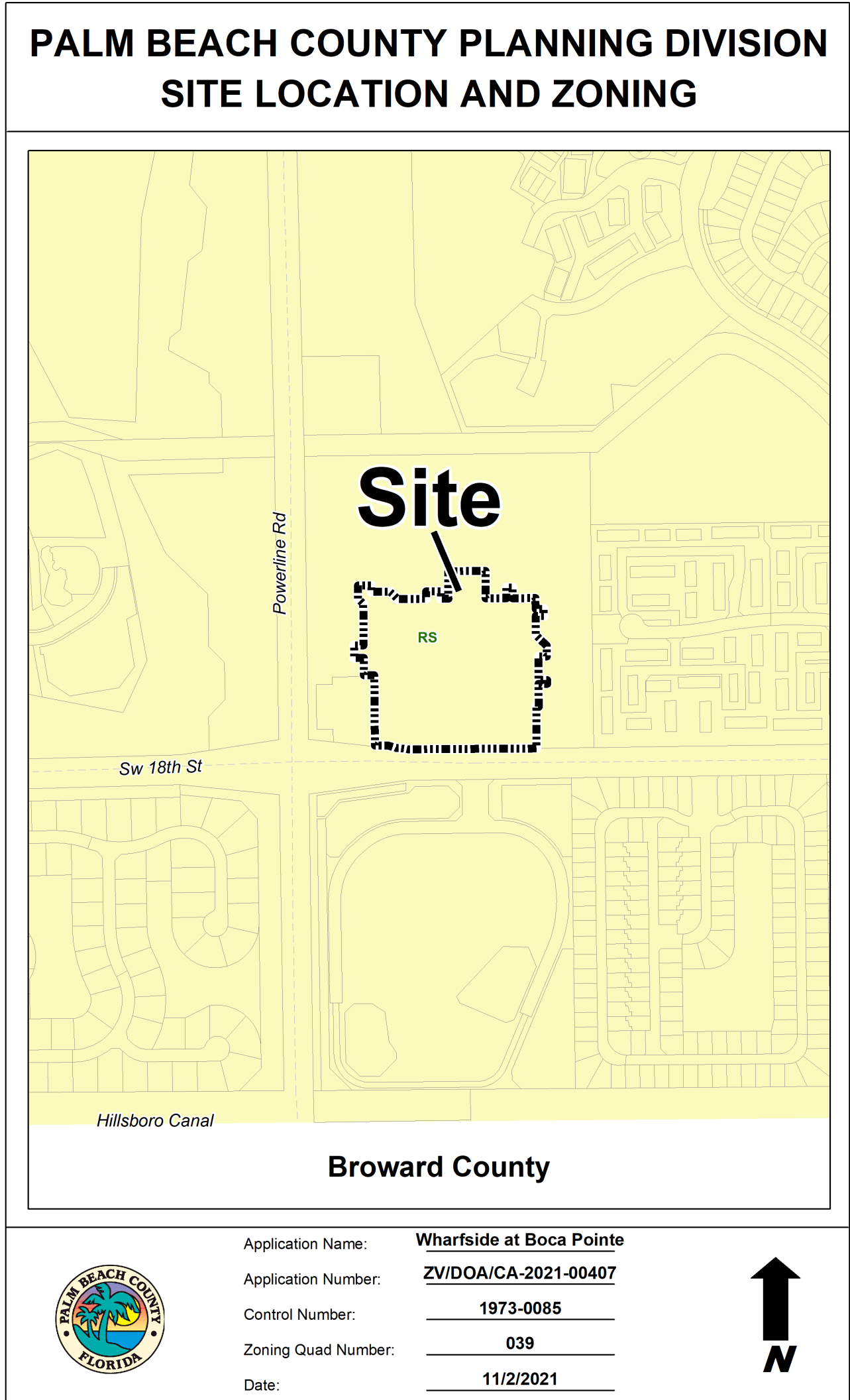
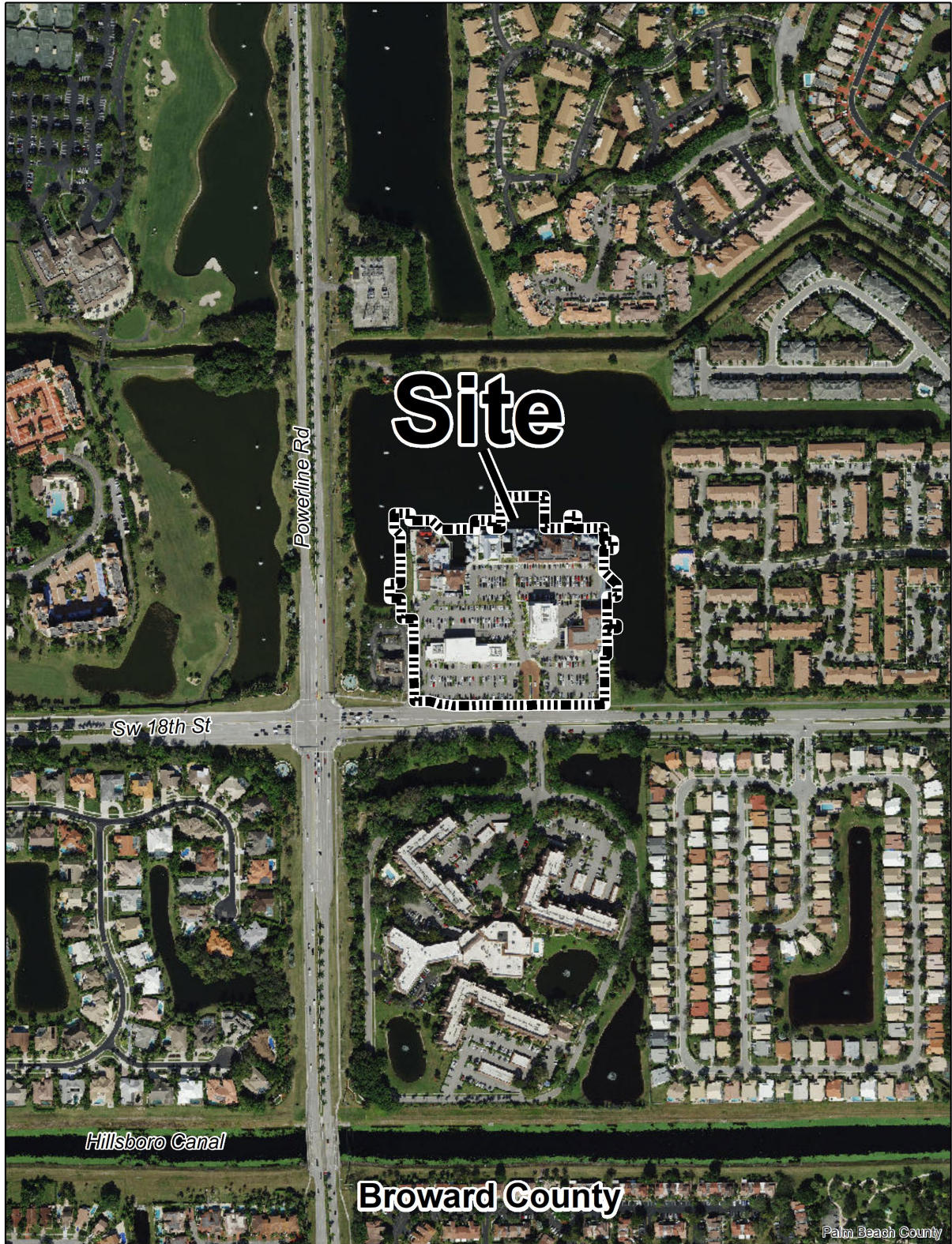


Figure 3 - Aerial

# PALM BEACH COUNTY PLANNING DIVISION SITE LOCATION

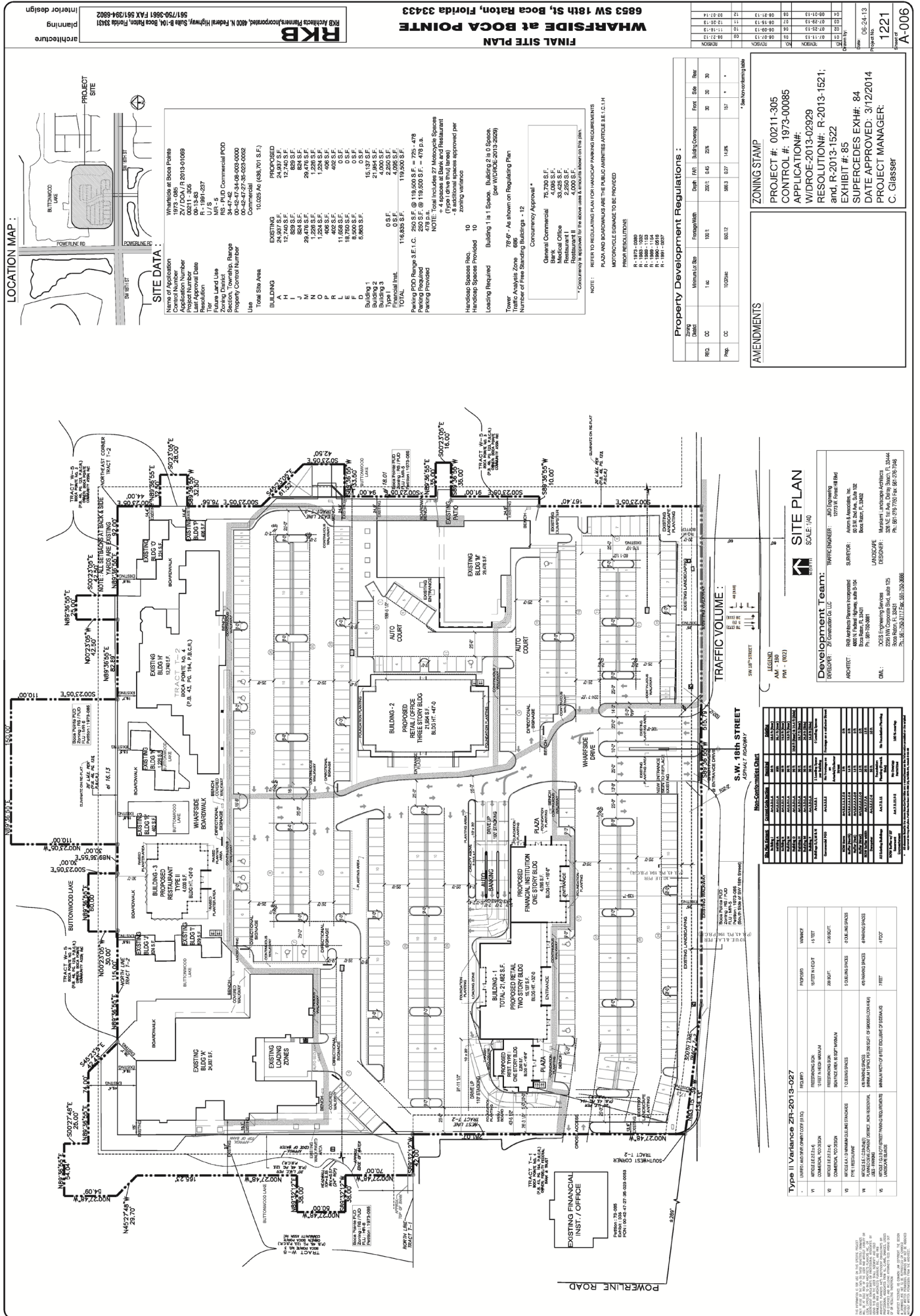


Application Name: Wharfside at Boca Pointe  
Application Number: ZV/DOA/CA-2021-00407  
Control Number: 1973-0085  
Atlas Page Number: 118  
Date: 11/2/2021





Figure 5: Approved Site Plan, dated March 12, 2014



**Exhibit D – Disclosure of Ownership**

PALM BEACH COUNTY - ZONING DIVISION

FORM # 9

**DISCLOSURE OF OWNERSHIP INTERESTS – PROPERTY**

*[TO BE COMPLETED AND EXECUTED BY THE PROPERTY OWNER(S) FOR EACH APPLICATION FOR COMPREHENSIVE PLAN AMENDMENT OR DEVELOPMENT ORDER]*

**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 Carlos Ulloa, 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  Manager *[position - e.g., president, partner, trustee]* of Boca Wharfside LLC *[name and type of entity - e.g., ABC Corporation, XYZ Limited Partnership]* that holds an ownership interest in real property legally described on the attached Exhibit "A" (the "Property"). The Property is the subject of an application for Comprehensive Plan amendment or Development Order approval with Palm Beach County.

2. Affiant's address is: 6909 SW 18th Street, Suite A-103 Boca Raton, FL 33433  
\_\_\_\_\_  
\_\_\_\_\_

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 Property. 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 application for Comprehensive Plan amendment or Development Order approval affecting the Property. Affiant further acknowledges that he or she is authorized to execute this Disclosure of Ownership Interests on behalf of any and all individuals or entities holding a five percent or greater interest in the Property.

5. Affiant further acknowledges that he or she shall by affidavit amend this disclosure to

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.

\_\_\_\_\_  
Carlos Ulloa, Affiant  
(Print Affiant Name)

NOTARY PUBLIC INFORMATION:

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 9th day of September, 2021 by Carlos Ulloa (name of person acknowledging). He/she is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification and did/did not take an oath (circle correct response).

\_\_\_\_\_  
Marquita Brown  
(Name - type, stamp or print clearly)

\_\_\_\_\_  
(Signature)

My Commission Expires on: 6/13/24



**EXHIBIT "A"**

**PROPERTY**

Plat Book 125, Pages 94 through 96, recorded in the Public Records of Palm Beach County, Florida.

LEGAL DESCRIPTION:

PARCEL 1:

PARCEL A OF WHARFSIDE AT BOCA POINTE P.U.D., ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 125, PAGE(S) 94-96, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

PARCEL 2:

TOGETHER WITH NON-EXCLUSIVE EASEMENT RIGHTS CREATED UNDER THAT CERTAIN AMENDED AND RESTATED DECLARATION FOR BOCA POINTE RECORDED IN OFFICIAL RECORDS BOOK 13764, PAGE 793, FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTION OF BOCA POINT RECORDED IN OFFICIAL RECORDS BOOK 26038, PAGE 1039 AND SECOND AMENDMENT TO THIRD AMENDED AND RESTATED BY LAWS OF BOCA POINTE, COMMUNITY ASSOCIATION, INC., RECORDED IN OFFICIAL RECORDS BOOK 27435, PAGE 643, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

SAID LANDS LYING IN PALM BEACH COUNTY, FLORIDA AND CONTAINING 436,701 SQUARE FEET (10.0253 ACRES) MORE OR LESS.



**EXHIBIT "B"**

**DISCLOSURE OF OWNERSHIP INTERESTS - PROPERTY**

Affiant must identify all entities and individuals owning five percent or more ownership interest in the Property. Affiant must identify individual owners. For example, if Affiant is an 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**

Boca Wharfside LLC

6909 SW 18th Street, Suite A-103 Boca Raton, 33433



**BOCA POINTE PUD - WHARFSIDE AT BOCA POINTE  
DEVELOPMENT ORDER AMENDMENT**

**Justification Statement**

**Control No. 1973-085**

**Application No.: CA/DOA/ZV 2021-00407**

**PCN: 00-42-47-34-25-001-0000**

Original Submittal: May 3, 2021

1<sup>st</sup> Resubmittal: September 13, 2021

2<sup>nd</sup> Resubmittal: October 12, 2021

Minor Resubmittal: October 25, 2021

**Introduction:**

On behalf of the Owner, Boca Wharfside, LLC, 2GHO, Inc., acting as agent, respectfully request approval of the following requests:

1. Development Order Amendment to expand the outdoor space of the existing restaurants with weather protection and pedestrian circulation to facilitate the success of these businesses within the Commercial Pod of Boca Pointe PUD;
2. Conditional Use “A” for two (2) existing Restaurants, Type 2 over 5,000 square feet.; and
3. Type II Variances to allow reduction of setbacks for the canopies provided for weather protection and pedestrian circulation based on Article 3.D.1.A. Property Development Regulations.

The property is located on the northeast corner of SW 18<sup>th</sup> Street and Powerline Road. The subject site is 10.025 acres of land is the commercial pod of Boca Pointe PUD with an existing Land Use Designation of Medium Residential (MR-5) and a Zoning District of RS/PUD. The subject site is located within Palm Beach County’s Urban/Suburban Tier.

**Development Program:**

1. The proposed Development Order Amendment will allow for canopies to be used over the existing/vested outdoor seating referenced in the building permits along with expanded areas for weather protection and pedestrian circulation. These canopies proposed will be around the perimeter of the site adjacent to the open water tracts of the Boca Pointe PUD. Please note the outdoor seating was existing prior to 2017 per the building permits.

As restaurants look to maximize efforts to provide a safe environment for patrons in some locations the canopies have been added for weather protection and pedestrian circulation for the vested outdoor seating as an alternate to indoor dining. The provision of canopies for weather protection will provide a more enjoyable experience which will

Boca Pointe PUD - Wharfside at Boca Pointe  
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Minor Resubmittal: October 25, 2021  
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protect patrons from the sun. Additionally, this takes advantage of the beautiful settings that the adjacent water provides along with resulting breezes.

2. Type 2 Variances are being requested for the encroachment of the canopies into the required setbacks. Buildings H, M and Building 3 will require a variance from the required 30 foot setback.
3. Conditional Use "A" for an existing restaurant over 5,000 s.f. Article 4.B.2.34 requires that all type 2 restaurants over 5,000 s.f. be approved through a Conditional Use A process.
  1. *Building A – 5,975 s.f. plus 450 s.f. canopies = 6,425 s.f. This request resolves a previously approved non-conformity on the site (Conditional Use "A").*
  2. *Building H – 3,255 s.f. plus 1,104 s.f. of outdoor seating = 4,359 s.f.*
  3. *Building M – 3,380 s.f. plus 1,354 s.f. of outdoor seating = 4,734 s.f.*
  4. *Building 3 – 4,000 s.f. plus 1,000 s.f. of outdoor seating = 5,000 s.f. (Conditional Use "A").*

Based on the previously approved site plan and the traffic study the overall square footage of the development is 119,500 s.f.. The graphic portion of the site plan illustrates an actual existing total square footage of 116,312 s.f.. With this requested Development Order Amendment, we are increasing the overall square footage from the previously approved amount of 119,500 s.f. by 350 s.f. for Type 2 Restaurants for an overall total square foot of use area to be 119,850 s.f. for the project.

#### Type 2 Variances:

There are three (3) of the buildings that will need a Type 2 Variance for encroachment of the required PUD setback of 30 feet Table 3.D.1.A Property Development Regulations for CC Zoning District. The reference for this setback is from Table 3.E.2.D – Planned Unit Development Property Development Regulations for Commercial Pods within a Planned Unit Development:

- Building H – Required Rear Setback – 30 feet /Proposed – 0 feet / Variance – 30 feet
- Building M – Required Side Setback – 30 feet /Proposed – 0 feet / Variance – 30 feet
- Building 3 – Required Rear Setback – 30 feet /Proposed – 0 feet / Variance – 30 feet

An updated Traffic Analysis prepared by Simmons and White is being provided with this application which will reference of the additional outdoor seating. This additional square footage does not affect the overall traffic for the development. Some of the uses throughout the development have changed however the traffic is based on General Commercial trips and not specific uses.

The Concurrency Box for the development does provide for the individual uses although as stated above the traffic is based on general commercial:

- General Commercial 58,473 s.f.
- Medical Office 28,715 s.f.

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Boca Pointe PUD - Wharfside at Boca Pointe  
 Original Submittal: May 3, 2021  
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- Restaurant Type 1 4,965 s.f.
- Restaurant Type 2 (inline) 27,697 s.f.
- TOTAL S.F. 119,850 S.F.

**Surrounding Properties:**

The following summarizes the nature of the surrounding properties adjacent to the subject site.

	EXISTING FLU	EXISTING ZONING	PCN	EXISTING USE	CONTROL NUMBER
Subject Site	MR-5	RS/PUD	00-42-47-34-25-001-0000 00-42-47-27-35-023-0053	VACANT	1973-85
North	MR-5	RS/PUD	00-42-47-34-05-002-0000	WATER TRACT OF PUD	1973-85
South	MR-5	RS/PUD	00-42-47-34-09-002-0000	TYPE 3 CLF	1973-85
East	MR-5	RS/PUD	00-42-47-34-05-002-0000	WATER TRACT OF PUD	1973-85
West	MR-5	RS/PUD	00-42-47-34-05-002-0000	WATER TRACT OF PUD	1973-85

**North:** PCN: 00-42-47-34-05-002-0000 located in Unincorporated Palm Beach County.

**FLU Designation:** Medium Residential (MR-5)

**Zoning District** – Single-Family Residential District (RS) with a SE for a PUD

**Supporting** – residential water management tract (Boca Pointe PUD No. 3 W-5, Control No. 1973-85)

**South:** PCN: 00-42-47-34-09-002-0000 located in Unincorporated Palm Beach County.

**FLU Designation:** Medium Residential (MR-5)

**Zoning District** – Single-Family Residential District (RS) with a SE for a PUD

**Supporting** – residential-Type 3 CLF and Nursing Facility, (Edgewater Pointe Estates, Control No. 1973-85)

**East:** PCN: 00-42-47-34-05-002-0000 located in Unincorporated Palm Beach County.

**FLU Designation:** Medium Residential (MR-5)

**Zoning District** – Single-Family Residential District (RS) with a SE for a PUD

**Supporting** – residential water management tract (Boca Pointe PUD No. 3 W-5, Control No. 1973-85)

**West:** PCN: 00-42-47-34-05-002-0000 located in Unincorporated Palm Beach County.

**FLU Designation:** Medium Residential (MR-5)

**Zoning District** – Single-Family Residential District (RS) with a SE for a PUD

**Supporting** – residential water management tract (Boca Pointe PUD No. 3 W-5, Control No. 1973-85).

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Boca Pointe PUD - Wharfside at Boca Pointe  
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**Development History:**

Application No.	Resolution and Request	Approval Date
1973-00085	Resolution R-73-380 approved a Rezoning from the Agricultural District to the RS Zoning District and a SE to allow a PUD.	July 17, 1973
1973-00085 (A)	Resolution R-83-1032 approved a SE to amend the Master Plan to relocate open spaces, add and delete dwelling units (- 202 units overall) and add a guard gate.	September 13, 1983
1973-00085 (B)	Resolution R-89-1153 approved a SE to amend the Master Plan to change the designation of Tract R from Civic to Residential, increase density and units (+35).	June 13, 1989
1973-00085 (C)	Resolution R-89-1154 approved an amendment to the Master Plan to allow a Nursing Home (60 beds) and a Type 3 Congregate Living Facility (CLF) (616 beds).	June 13, 1989
1973-00085 (D)	Resolution R-90-516 approved the Modification of Commission requirements (aka Conditions of Approval).	March 27, 1990
1973-00085 (E)	Resolution R-91-237 approved the modification of Conditions of Approval for Condition 14 (walls, berms).	February 26, 1991
DOA-2006-1371	Resolution R-2007-004 approved an amendment to the Master Plan to re-designate the land use (Residential to Civic) for a portion of Pod D, add 2 access points to newly created Pod D2, and modify Conditions of Approval.	January 4, 2007
DOA-2013-01334	Resolution R-2013-1254 approved an amendment to the Master Plan to re-designate Tract Y-2 from Club Property Recreation to Residential and add 100 Multi-Family dwelling units, 0.79-acre of Recreation, and 0.20-acre of Neighborhood Park.	September 26, 2013
ZV/DOA/R-2013-01069	Resolution R2013-1521, R 2013-1522 and ZR 2013-0027 Type II Variances to allow an increase in height and sign face area of a Freestanding Sign; a decrease of queuing spaces for the Type 1 Restaurant; a decrease in the number of parking spaces; and, a reduction in width of landscape requirements for the parking area for Tract T-2 of the Commercial Pod.	October 3, 2013

**Building permits issued prior to Supplement 21 that reflect the vested outdoor seating :**

- Rafina – B2014-012593
- Rise – B2017-7267
- Oli's – B2016-017092 (permitted for Blue Moon)

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**Status of Conditions of Approval for Resolution Nos. 2013-1521 and 2013-1522:**

**ALL PETITIONS**

1. All previous conditions of approval applicable to the subject property, as contained in Resolutions R-73-380 (Control No. 1973-085), R-83-1032 (Control No. 1973-085(A)), R-89-1153 (Control No. 1973-085(B)), R-89-1154 (Control No. 1973-085(C)), R-90-516 (Control No. 1973-085(D)), R-91-237 (Control No. 1973-085(E)), and R-2007-0004 (Control No. 1973-085), shall remain in effect unless expressly modified 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) **ONGOING**

2. The Conditions of Approval as contained herein shall apply to Tract T-2 of the Commercial Pod only (the Affected area of Application ZV/DOA/R-2013-1069), unless expressly stated. The approved Preliminary Master Plan is dated August 15, 2013. 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 ULDC, must be approved by the Board of County Commissioners. (ONGOING: ZONING - Zoning) **ONGOING**

3. Development of Tract T-2 is limited to the uses and/or site design approved by the Board of County Commissioners. The approved Preliminary Site Plan is dated August 15, 2013 and the approved Preliminary Regulating Plan is dated July 18, 2013. All modifications to the Development Order must be approved by the Board of County Commissioners or Zoning Commission, unless the proposed changes are required to meet Conditions of Approval. (DRO: ZONING - Zoning) **ONGOING**

**ARCHITECTURAL REVIEW**

1. At time of submittal for Final Approval by the Development Review Officer (DRO), the Architectural Elevations for the retail buildings shall be submitted for review and approval by the Zoning Division. Architectural Elevations shall comply with the standards indicated in Article 5.C of the Unified Land Development Code (ULDC). Development shall be consistent with the approved Architectural Elevations, the DRO approved Final Plan, all applicable Conditions of Approval, and all ULDC requirements. (DRO: ZONING - Zoning) **COMPLETED**

**ENGINEERING**

1. The Property Owner shall fund the cost of signal installation if warranted as determined by the County Engineer at SW 18th St and Project Entrance. Signalization shall be a mast arm structure installation. The cost of signalization shall also include all design costs and any required utility relocation and right of way or easement acquisition. **COMPLETED**

a. The Property Owner shall provide acceptable surety to the Traffic Division in an amount as determined by the Director of the Traffic Division by April 30, 2014. (DATE:

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MONITORING-Eng). **COMPLETED**

b. In order to request release of the surety for the traffic signal at the above intersection, the Property Owner shall provide written notice to the Traffic Division stating that the final certificate of occupancy has been issued for this development and requesting that a signal warrant study be conducted at the intersection. The Traffic Division shall have 24 months from receipt of this notice to either draw upon the monies to construct the traffic signal or release the monies. In the event that the property is sold, the surety may be returned once the Traffic Division receives written documentation of the sale and a replacement surety has been provided to the Traffic Division by the new Property Owner. (ONGOING: ENGINEERING-Eng) **COMPLETED**

2. 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, 2018. 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-Eng) **COMPLETED**

3. Prior to issuance of a Certificate of Occupancy for Wharfside at Boca Pointe, the Property Owner shall legally create the lot in accordance with Article 11 of the Unified Land Development Code. Creation of the legal lot shall apply to both Tract W-5 in P.B. 46, PG. 123 and Tract T-2 in P.B. 43, PG. 194 to reflect the current property line.(CO: MONITORING - Eng) **THE PROPERTY HAS BEEN PLATTED.**

PLANNED DEVELOPMENT

1. Prior to issuance of a Certificate of Completion for Building 1 or Building 2, Buildings E, F, and L shall be demolished and the Demolition Permits completed. **COMPLETED**

SITE DESIGN

1. The site shall be limited to a maximum of 119,500 square feet. (ONGOING: ZONING - Zoning) **THIS WILL BE MODIFIED WITH THE APPROVAL – 122,532 SQUARE FEET.**

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) **ONGOING.**

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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) **ONGOING**.

#### DISCLOSURE

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

Please note the subject site is the Commercial Pod of Boca Pointe PUD and as such, the MUPD standards are addressed here:

#### **Multiple Use Planned Development Design** **Objectives and Performance Standards – Article 3.B.1 and 2**

In addition to the Development Order Amendment, the project must continue to meet the Objectives and Performance Standards.

**Design Objectives:** The proposed project meets the design objectives of the ULDC for Commercial Pod within a PUD as follows:

- a. The subject site is the Commercial Pod within the Boca Pointe PUD; is developed and includes multiple uses such as offices, medical offices and restaurants for the adjacent residents.



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- b. Provide innovative building location and orientation; the existing building when built met the requirements of Article 5.C. design. The canopies proposed provide for outdoor seating to enjoy the South Florida air. These canopies are located along the boardwalk of the development to provide weather protection and pedestrian circulation which are surrounded by water on three (3) sides.
- c. Protect adjacent residential uses from potential adverse impacts; the proposed Development Order Amendment will allow for expanded use of the outdoor space around the perimeter of the site adjacent to the open water tracts of Boca Pointe PUD. The outdoor space will allow the existing restaurants to provide space for the patrons to dine out. The vested outdoor seating is referenced on the building permits for these restaurants. The restaurants are not increasing the seating capacity but, simply relocating seats from the inside to provide outdoor dining for their patrons. Providing covered seating areas provide a more enjoyable experience without having to worry about the discomfort of the heat. Additionally, this takes advantage of the beautiful settings that the adjacent water provides along with resulting breezes.
- d. Provide interconnection between uses in and adjacent to the project; as mentioned the subject site is developed with pedestrian connections throughout the project as well as to the entrance at SW 18<sup>th</sup> Street.
- e. Allow for landscape design that enhances the appearance of the project; the commercial development is existing and either meets or exceeds the landscaping requirements with the existing landscaping.
- f. An MUPD with an EDC FLU designation shall be primarily utilized by office and research parks, which may also include manufacturing and processing, research and development, wholesale distribution and storage of products; The Commercial Pod as part of the Boca Pointe PUD and has a MR-5 Land Use Designation and RS-PUD and as such this standard does not apply.

**Performance Standards:** The Performance Standards for MUPD's are addressed below:

- a. **Freestanding Buildings:** No additional buildings are proposed with this application.
- b. **Non-Vehicular Circulation – A MUPD shall be designed to provide for pedestrian and bicycle oriented circulation system throughout the development.** As mentioned above, there is existing pedestrian interconnectivity on site.
- c. **Landscape Buffers – The landscape buffers are existing and are not proposed to be amended with this application.**

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- d. **Cross Access** – No cross access is proposed, as noted the overall development is completely built.
- e. **Parking and Loading** - The proposed Site Plan complies with all Parking Area and Loading Area Screening requirements.

**Development Order Amendment and Conditional Uses Standards:**

Based on Article 2.B.7.C.2 for a Development Order Amendment (DOA) refers the Applicant to address the Standards under Article 2.B.7.B.2 (Conditional Use and Rezoning) of the Palm Beach County Unified Land Development Code (ULDC) establishes standards by which these requests shall be considered.

**a. Consistency with the Plan:**

*Response: The proposed Development Order Amendment and the Conditional Use "A" for Type 2 Restaurants are consistent with the purposes, goals, objectives and policies of the Plan. The subject site is the Commercial Pod of the Boca Pointe PUD which as a MR-5 Future Land Use Designation. Additionally, the subject property is located within the Urban/Suburban Tier.*

*This Applicant's proposal is consistent with the following policies:*

*The maximum Floor Area Ratio (FAR) of 0.45 is allowed for a non-residential project with the MR-5 Future Land Use (FLU) designation in the U/S Tier (10.025 acres x 43,560 sq. ft./acre x 0.45 maximum FAR = 196,510 sq. ft. maximum). The current application would amend the FAR to be 0.26 based upon 115,479 s.f./436,689 sf. This does not include outdoor seating.*

**b. Consistency with the Code:**

*Response: The proposed Development Order Amendment and the Conditional Use "A" for Type 2 Restaurants complies with all applicable standards and provisions of this Code for use, layout, function and general development characteristics.*

*Article 4.B.2.34.b.3 – Restaurant, Type 2 within a PUD Commercial POD – a Type 2 Restaurant less than 5,000 s.f. of GFA per establishment, including outdoor dining area, may be approved through DRO. The applicant is requesting two (2) Conditional Use A that would allow for a Type 2 Restaurant over the 5,000 s.f.*

- 1. Building A – 5,975 s.f. plus 450 s.f. canopies = 6,425 s.f. This request resolves a previously approved non-conformity on the site (Conditional Use "A").*
- 2. Building H – 3,255 s.f. plus 1,104 s.f. of outdoor seating = 4,359 s.f.*
- 3. Building M – 3,380 s.f. plus 1,354 s.f. of outdoor seating = 4,734 s.f.*
- 4. Building 3 – 4,000 s.f. plus 1,000 s.f. of outdoor seating = 5,000 s.f. (Conditional Use "A").*

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**c. Compatibility with Surrounding Uses:**

*Response: The existing or proposed canopies and the uncovered outdoor seating are compatible and generally consistent with the uses and character of the land surrounding. The Wharfside at Boca Pointe Development is surrounded by the water tracts of the Boca Pointe PUD.*

**d. Design Minimizes Adverse Impact:**

*Response: as stated above, the Commercial Pod is completely development and the proposed application requests will not have an adverse impact visual impact on the adjacent properties. The existing or proposed canopies and the uncovered outdoor seating are to be located around the perimeter of the site at the water's edge. All of the existing landscape, parking etc. is not being impacted by the canopies.*

**e. Design Minimizes Environmental Impact:**

*Response: Although we are required to apply for the DOA and the Conditional Use "A" for the Type 2 Restaurants, the change to the outdoor seating will not impact the overall environmental design of this property. Design minimizes environmental impacts, including, but not limited to water, air stormwater management, wildlife, vegetation, wetlands and the natural functioning of the environment. As stated above, there are no changes being proposed to the existing landscaping on site.*

**f. Development Patterns:**

*Response: The DOA to add the outdoor seating and Conditional Use "A" for Type 2 restaurants will result in a logical, orderly and timely development pattern; The existing Commercial Pod is consistent with other commercial developments within the area; The Type 2 restaurants are existing within the development and with the addition of the outdoor seating along the water two (2) restaurants are exceeding the 5,000 square feet and are required to obtain a Conditional Use "A".*

**g. Adequate Public Facilities:**

*Response: The proposed DOA and the Conditional Uses comply with Article 2.F, Concurrency. The expanded use/proposed canopies are part of the existing buildings on site and are connected to the public services and utilities.*

*Traffic; the expanded use/proposed canopies are part of the approved 119,500 s.f. that is a vested commercial development. The traffic has been updated to include the 350 s.f. addition. The overall development generates 70 AM peak hour trips and 381 PM peak hours trips, the project meets the PBC Traffic Performance Standards.*

*Potable Water & Wastewater: the subject site is connected to PBCWUD with no changes being required.*

*Drainage: The site is situated within the Lake Worth Drainage District and the South Florida Water Management Hillsboro Drainage Basin. The existing center has an approval SFWMD Permit No 50-00792-0S.*

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**h. Changed Conditions or Circumstances:**

*Response: There are demonstrated changed conditions or circumstances. This project has been a staple of the community for quite a long time and providing this use will allow its users/patrons to opportunity to enjoy the South Florida weather.*

**TYPE II VARIANCE**

This application requests a Type 2 Variance for a reduction in the setbacks within a Commercial POD of a PUD.

VARIANCE	ULDC CODE SECTION	REQUIRED	PROPOSED	VARIANCE
V.6	Table 3.E.2.D Commercial POD - CC Table 3.D.1.A	Rear - 30 feet	Building H - 0 feet Building 3 - 0 feet	Building H - 30 feet Building - 0 feet
V.7	Table 3.E.2.D Commercial POD - CC Table 3.D.1.A	Side - 30 feet	Building M - 0 feet	Building M - 30 feet

Pursuant to ULDC Section 2.B.7.E, the following criteria must be satisfied for the granting of variances. Below is an analysis of the variance standards which demonstrates compatibility.

- a) Special conditions and circumstances exist that are peculiar to the parcel of land, building or structure, that are not applicable to other parcels of land, structures or buildings in the same zoning district:

*V.6 and V.7 – Combined Response: There are special conditions and circumstances that existing with the subject site. The request is to allow the addition or expansion of existing canopies for outdoor seating at existing businesses. These businesses are located on the site in such that they look out onto a large water body of water on both the rear and sides of the project. This setting is conducive to providing a pleasant outdoor seating environment preferable to patrons.*

- b) Special circumstances and conditions do not result from the actions of the Applicant.

*V.6 and V.7 – Combined Response: There are special conditions and circumstances that existing with the subject site that do not result from the actions of the Applicant. Granting of this variance will not grant any special circumstances or conditions. Outdoor seating for user enjoyment is common and often requested at restaurants and offices. The restaurants also have building permits that reference the outdoor seating that were issued between 2014-2016.*

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- c) Granting the variance shall not confer upon the applicant any special privilege denied by the comprehensive plan and this code to other parcels of land, buildings or structures in the same zoning district:

*V.6 and V.7 – Combined Response: Granting of this variance does not confer any special privilege denied by the Comprehensive Plan and the ULDC. As noted above, the site is part of the Boca Pointe PUD as the Commercial Pod, and has a RS/PUD Zoning and has a MR5 Land Use Designation. The ULDC provides the opportunity for sites to request variances from Article 3 of the Code if the requirements cannot be met. Outdoor seating is allowed in the Code and must meet the setbacks. The outdoor seating is vested based upon the building permits that have been issued, the requested variances are for the canopies This request resolves a previously approved non-conformity on the site.*

- d) Literal interpretation and enforcement of the terms and provisions of this code would deprive the applicant of rights commonly enjoyed by other parcels of land in the same zoning district, and would work an unnecessary and undue hardship:

*V.6 and V.7 – Combined Response: A literal enforcement would deprive the applicant of rights commonly enjoyed by other parcels. The request is to allow the addition or expansion of existing canopies for vested outdoor seating at existing businesses. These businesses are located on the site in such that they look out onto a large water body of water on both the rear and sides of the project. This setting is conducive to providing a pleasant outdoor seating environment preferable to patrons.*

- e) Grant of variance is the minimum variance that will make possible the reasonable use of the parcel of land, building or structure:

*V.6 and V.7 – Combined Response: The requested variance is the minimum variance to allow reasonable use of the property that will not create any adverse impacts on surrounding uses. The canopies provide for weather protection be used by the patrons when using the vested outdoor seating which often requested at restaurants and offices.*

- f) Grant of the variance will be consistent with the purposes, goals, objectives and policies of the comprehensive plan and this code:

*V.6 and V.7 – Combined Response: The requested variance is the minimum variance to allow reasonable use of the property that will not create any adverse impacts on surrounding uses. This request resolves a previously approved non-conformity on the site.*

- g) The grant of the variance will not be injurious to the area involved or otherwise detrimental to the public welfare:

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*V.6 and V.7 – Combined Response: The granting of this variance will not be injurious or detrimental to the public welfare. As stated above, this request resolves a previously approved non-conformity on the site. These businesses are located on the site in such that they look out onto a large water body of water on both the rear and sides of the project. This setting is conducive to providing a pleasant outdoor seating environment preferable to patrons.*

**Conclusion**

We respectfully request approval of the Development Order Amendment to expand the use of the building to allow outdoor seating areas, Conditional Use "A" for two (2) Type 2 Restaurants over 5,000 s.f. and the proposed Type 2 Variances for the PUD setbacks for the Wharfside at Boca Pointe Development. The project managers at 2GHO, Inc. are George G. Gentile, Daniel Siemsen and Patricia Lentini.

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