

RESOLUTION NO. R-95-528

RESOLUTION APPROVING ZONING PETITION DOA81-109(E)
DEVELOPMENT ORDER AMENDMENT
PETITION OF WEST DELRAY REALTY

WHEREAS, the Board of County Commissioners, as the governing body of Palm Beach County, Florida, pursuant to the authority vested in Chapter 163 and Chapter 125, Florida Statutes, and the Palm Beach County Unified Land Development Code, is authorized and empowered to consider petitions relating to zoning; and

WHEREAS, the notice and hearing requirements, as provided for in Article 5 of the Palm Beach County Unified Land Development Code, have been satisfied; and

WHEREAS, Zoning Petition DOA81-109(E) was presented to the Board of County Commissioners at a public hearing conducted on April 27, 1995; and

WHEREAS, the Board of County Commissioners has considered the evidence and testimony presented by the petitioner and other interested parties, and the recommendations of the various county review agencies; and

WHEREAS, this approval is subject to Article 5, Section 5.8 (Compliance with Time Limitations), of the Palm Beach County Unified Land Development Code and other provisions requiring that development commence in a timely manner; and

WHEREAS, the Board of County Commissioners made the following findings of fact:

1. This Development Order Amendment is consistent with the Palm Beach County Comprehensive Plan.
2. This Development Order Amendment complies with the relevant and appropriate portions of Article 6, Supplementary Use Standards; of the Palm Beach County Unified Land Development Code.
3. This Development Order Amendment is consistent with the requirements of the Palm Beach County Unified Land Development Code.
4. This Development Order Amendment, with conditions as adopted, is compatible as defined in the Palm Beach County Unified Land Development Code and generally consistent with the uses and character of the land surrounding and in the vicinity of the land proposed for development.
5. This Development Order Amendment, with conditions as adopted, complies with the standards imposed on it by applicable provisions of the Palm Beach County Unified Land Development Code for use, layout, function, and general development characteristics.
6. This Development Order Amendment meets applicable local land development regulations.
7. This Development Order Amendment, with conditions as adopted, minimizes adverse effects, including visual impact and intensity of the proposed use on adjacent lands.

- a. This Development Order Amendment has a concurrency reservation and therefore complies with Article 11 (Adequate Public Facility Standards) of the Palm Beach County Unified Land Development Code.
9. This Development Order Amendment, with conditions as adopted, minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands and the natural functioning of the environment.
10. This Development Order Amendment, with conditions as adopted, will result in logical, timely and orderly development patterns.

WHEREAS, Article 5 of the Palm Beach County Unified Land Development Code requires that the action of the Board of County Commissioners be adopted by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that Zoning Petition DOA81-109(E) the petition of West Delray Realty for a DEVELOPMENT ORDER AMENDMENT to redesign the site plan for the subject property and to allow two fast food restaurants as requested uses on a parcel of land legally described in EXHIBIT A, attached hereto and made a part hereof, and generally located as shown on a vicinity sketch attached as EXHIBIT B, attached hereto and made a part hereof, was approved on April 27, 1995, subject to the conditions of approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Roberts moved for the approval of the Resolution.

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

Ken Foster, Chair	--	Absent
Burt Aaronson	--	Aye
Maude Ford Lee	--	Absent
Karen T. Marcus	--	Aye
Mary McCarty	--	Absent
Warren Newell	--	Aye
Carol A. Roberts	--	Aye

The Chair thereupon declared that the resolution was duly passed and adopted this 27th day of April, 1995.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

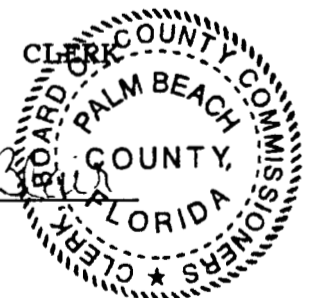
DOROTHY H. WILKEN, CLERK

BY:


COUNTY ATTORNEY

BY:


DEPUTY CLERK



LEGAL DESCRIPTION

EXHIBIT "A"

PARCEL A:

A PARCEL OF LAND IN PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: THE WEST ONE-HALF (W. 1/2) OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4) OF SECTION 22, TOWNSHIP 46 SOUTH, RANGE 42 EAST, LESS THE NORTH 515 FEET THEREOF; TOGETHER WITH THE NORTH ONE-HALF (N 1/2) OF THE SOUTHWEST ONE-QUARTER (SW 1/4) OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4) OF SECTION 22, TOWNSHIP 46 SOUTH, RANGE 42 EAST, ALL IN PALM BEACH COUNTY, FLORIDA, LESS THE WEST 60.00 FEET THEREOF.

PARCEL B:

THE EAST ONE-HALF (E 1/2) OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4) OF SECTION 22, TOWNSHIP 46 SOUTH, RANGE 42 EAST PALM BEACH COUNTY, FLORIDA.

PARCEL C:

THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 22, TOWNSHIP 46 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA.

LESS AND EXCEPTING FROM THE ABOVE THREE (3) PARCELS THE RIGHT-OF-WAY OF STATE ROAD S-806 AS SHOWN ON ROAD PLAT BOOK 3, PAGE 24 AND OFFICIAL RECORDS BOOK 1014, PAGE 102; THE RIGHT-OF-WAY FOR STATE ROAD S-806 AS DESCRIBED IN OFFICIAL RECORDS BOOK 3641, PAGE 1; AND THE RIGHT-OF-WAY GRANTED TO LAKE WORTH DRAINAGE DISTRICT IN DEED BOOK 113, PAGE 135, DEED BOOK 113, PAGE 138 AND DEED BOOK 222, PAGE 469 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

SAID LANDS LYING IN PALM BEACH COUNTY, FLORIDA AND CONTAINING 857,079 SQUARE FEET (19.68 ACRES), MORE OR LESS.

EXHIBIT C

CONDITIONS OF APPROVAL

A. GENERAL

1. All previous conditions of approval applicable to the subject property, as contained in Resolutions R-81-1050, R-84-339, R-85-274, R-85-945 and R-89-579, are **hereby** repealed. (MONITORING)

B. BUILDING AND SITE DESIGN

1. All air conditioning and mechanical equipment shall be screened from view on all sides by a visually opaque barrier consistent with the color and character of the principle structure or equivalent landscape material. (BUILDING-Zoning)
2. Total gross floor area shall be limited to a maximum of 130,993 square feet. Expansion shall be limited to five per cent (5%) or 1,000 square feet, whichever is **less**. (BUILDING-Zoning)
3. To ensure consistency with the site plan dated December 21, 1994 presented to the Board of County Commissioners, no more than twenty-five (25) percent of the total approved square footage or other area indicated as **being** covered by structures shall be administratively relocated to portions of the site not previously covered. (ZONING)

C. DUMPSTER

1. All areas or receptacles for the storage and disposal of trash, garbage or vegetation, such as dumpsters and trash compactors, shall not be located within fifty (50) feet of the south property line were it abuts residential property and shall be confined to areas designated **on** the site plan. (BUILDING-Zoning)

D. LANDSCAPING - STANDARDS

1. All trees required to be planted **on** site by this approval shall meet the following minimum standards at installation:
 - a. Tree height: fourteen (14) feet.
 - b. Trunk diameter: 3.5 inches measured 4.5 feet above grade.
 - c. Canopy diameter: seven (7) feet. Diameter shall be determined by the average canopy radius at 3 points measured from the trunk to the outermost branch tip. Each radius shall measure at least 3.5 feet in length. (BUILDING-Zoning)

E. ENGINEERING

1. In order to comply with the mandatory Traffic Performance Standards, the Developer shall be restricted to the following phasing schedule:
 - a. Building Permits which generates more than 558 trips/day (6,065 square feet of gross building floor area of general retail) shall not be issued until construction has begun for the widening of **Jog** Road as a 6 lane median divided section from Linton Boulevard to Clint Moore Road plus the appropriate paved tapers. (BUILDING-Engineering).

- b. Building Permits which generates more than 7,349 trips/day shall not be issued until construction has begun for dual left turn lanes on Military Trail at Clint Moore Road plus the appropriate paved tapers. (BUILDING-Engineering)
- c. If the proposed development is not built out by December 31, 1996, then building permits which generates more than 7,349 trips per day shall not be issued until Military Trail is under construction as a 6 lane median divided section from Linton Blvd. to Clint Moore Road. (BUILDING-Engineering)

The mix of allowable commercial uses within the site may be adjusted 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. (ENGINEERING)

- 2. Prior to DRC approval of the site plan this property owner shall convey cross access easement(s) and indicate directional signage to the commercial property owners to the east, west and south. The location, number and document content of these easements and directional signage shall be subject to the approval of the County Engineer and County Attorney. (COUNTY ENGINEER/COUNTY ATTORNEY)

3. LANDSCAPE WITHIN MEDIAN

- a. Prior to issuance of a building permit, the property owner shall apply to the Palm Beach County Engineering and Public Works Department for a permit to landscape all adjacent median(s) of all abutting rights-of-way. When permitted by Palm Beach County Department of Engineering and Public Works, landscaping shall, at a minimum, consist of the "Low Cost Planting Concept" outlined in the Palm Beach County Engineering and Public Works Department March 1994 Streetscape Standards. All landscape material, installation, and maintenance requirements shall be subject to the standards; set forth by the Streetscape Standards. If all xeriscape material is utilized, the watering of the plant material during the initial heal-in period shall be the responsibility of the property owner. Alternative species other than those listed in the County standards may be allowed subject to approval by the County Engineer. (BUILDING-Engineering)
- b. All required median landscaping, including an irrigation system if required shall be installed at the property owners expense. All landscape material shall also be the perpetual maintenance obligation of the petitioner and its successors, heirs or assignees or duly established Property Owner's Association and/or Homeowners's Association. Perpetual maintenance includes, but is not limited to, pruning, fertilizing, irrigation, and alternate watering of Xeriscape material during periods of drought in order to maintain healthy plant material. All landscape material shall be installed on or before the issuance of a Certificate of Occupancy. (BUILDING-Engineering)
- c. Declaration of Covenants and Restriction Documents shall be established or amended as required, prior to issuance of a certificate of occupancy to reflect this obligation. (BUILDING-County Attorney)

4. The property owner shall pay a Fair Share Fee in the amount and manner required by the "Fair Share Contribution for Road Improvements Ordinance" as it presently exists or as it may from time to time be amended. The impact fee for zoning petition number 81-109(E) to be paid as follows:
 - a. The Fair Share Fee for the main 123,993 square foot center this project to be paid at the time of issuance of the Building Permit presently is \$246,675.00 (4,485 trips X \$55.00 per trip).
 - b. The Fair Share Fee for each of the 3,500 square foot fast food restaurants is \$39,600.00 (1,440 trips X \$27.50 per trip). (IMPACT FEE COORDINATOR)

5. The property owner shall construct the following turn lanes concurrent with paving and drainage improvements for the site.
 - a. Right turn lane west approach on West Atlantic Avenue at El Clair Ranch Road
 - b. Right turn lane west approach On West Atlantic Avenue at the projects western entrance.
 - c. Right turn lane south approach on Jog Road at the projects north entrance. Permits required by Palm Beach County for this construction shall be obtained prior to the issuance of the first Building Permit. Construction shall be completed prior to the issuance of the first Certificate of Occupancy.
 - d. Left turn lane north approach on Jog Road at the project's southern entrance.
 - e. Left turn/U-turn lane south approach on Jog Road at the Project's southern entrance.
 - f. Separate left and right turn lanes on the project's southern entrance at Jog Road. (BUILDING/ENGINEERING)

6. Prior to the issuance of a building permit the property owner shall convey to Palm Beach County Land Development Division by road right-of-way warranty deed additional right of way to provide for a separate right turn lane on Atlantic Avenue at the projects west entrance and 011 Jog Road at the projects north entrance onto Jog Road. Both right turn lane rights of way shall provide for a right turn lane of 280 feet in storage length, twelve feet in width and a taper length of 50 feet. This additional right of way shall be free of all encumbrances and encroachments and shall include "Safe Sight Corners" where appropriate as determined by the County Engineer. Property owner shall provide Palm Beach County with sufficient documentation acceptable to the Right of Way Acquisition Section to ensure that the property is free of all encumbrances and encroachments. (BUILDING-Engineering)

7. The Property Owner shall fund the cost of signal installation if warranted as determined by the County Engineer at West Atlantic Avenue and El Clair Ranch Road. Should signalization not be warranted after 36 months of the final Certificate of Occupancy this property owner shall be relieved from this condition (ENGINEERING - Building).

8. The Property Owner shall fund the cost of signal installation if warranted as determined by the County Engineer at the project's south entrance onto Jog Road. Should signalization not be warranted after 36 months of the final Certificate of Occupancy this property owner shall be relieved from this condition (ENGINEERING-Building).

F. LANDSCAPING - INTERIOR

1. One landscape island shall be provided for every ten (10) parking spaces. The maximum spacing between landscape islands shall not exceed one hundred (100) linear feet. (BUILDING-Zoning)
2. Landscaped divider medians with at grade bicycle and pedestrian cuts shall be provided in the center of all driveways over thirty (30) feet in width providing ingress and egress to the site. The minimum width of this median shall be six (6) feet. The minimum length of this median shall be twenty five (25) feet. A minimum width of five (5) feet of landscaped area shall be provided. One tree and appropriate ground cover shall be planted for each twenty (20) linear feet of the divider median. (BUILDING-Zoning)
3. One interior grade-level tree planters shall be provided for every five parking spaces. All required interior grade-level planters shall be planted with one (1) canopy tree and appropriate groundcover. (BUILDING-Zoning)
4. Landscape islands shall be provided along the front facade of the principal structures. The required landscape islands shall be a minimum of five (5) feet wide, and a minimum combined total length of forty percent (40%) of the front dimension of the structure. The required minimum landscape islands shall, at a minimum, be planted with one (1) canopy tree planted every twenty (20) feet on center and appropriate groundcover. A group of three or more palm trees may supersede the requirement for a canopy tree in that location (BUILDING - Zoning)

G. LANDSCAPING ALONG SOUTH AND EAST PROPERTY LINE (ABUTTING RESIDENTIAL LAND USE)

1. Landscaping and buffering along the south and east property lines, abutting residential land uses, shall be upgraded to include:
 - a. A minimum twenty five (25) foot wide landscape buffer strip.
 - b. A six (6) foot high opaque concrete wall. The exterior side of the wall shall be given a finished architectural treatment which is compatible and harmonious with abutting development. (BUILDING-Zoning)
2. The following landscaping requirements shall be installed on the exterior side of the required wall:
 - a. One (1) canopy tree planted every twenty (20) feet on center;
 - b. One (1) palm tree or pine tree for each twenty (20) linear feet, with a maximum spacing of sixty (60) feet on center. A group of three or more palm trees or pine trees may supersede the requirement for a native canopy tree in that location; and,

c. Thirty (30) inch high shrub or hedge material spaced no more than twenty four (24) inches on center at installation, to be maintained at a minimum height of forty-eight (48) inches. (BUILDING-Zoning)

3. Along the interior side of the required wall, the property owner shall install twenty-four (24) inch high shrub or hedge material spaced no more than twenty four (24) inches on center, to be maintained at a minimum height of thirty-six (36) inches. (ZONING)

H. LANDSCAPING ALONG ALL PROPERTY LINES (NOT ABUTTING RESIDENTIAL LAND USE)

1. Landscaping and buffering along all property lines that do not abut residential land uses shall be upgraded to include:

a. One (1) canopy tree planted every twenty (20) feet on center;

b. One (1) palm tree or pine tree for each twenty (20) linear feet, with a maximum spacing of sixty (60) feet on center. A group of three or more palm trees or pine trees may supersede the requirement for a native canopy tree in that location; and,

c. Thirty (30) inch high shrub or hedge material spaced no more than twenty four (24) inches on center at installation, to be maintained at a minimum height of forty-eight (48) inches. (BUILDING-Zoning)

3. Where the landscape buffer is impacted by an overhead power line system, the petitioner may submit a landscape betterment plan for approval by the Development Review Committee (DRC). The landscape betterment plan shall meet the intent of the conditions of approval, however, palms may be substituted for canopy trees. (ZONING)

I. LANDSCAPING ALONG WEST PROPERTY LINE (ABUTTING JOG/CARTER ROAD)

1. Landscaping and buffering along the west property line, abutting Jog/Carter Road, shall be upgraded to include:

a. A minimum three (3) foot high berm;

b. One (1) canopy tree planted every twenty (20) feet on center;

c. One (1) palm tree for each thirty (30) linear feet of frontage. A group of three or more palm trees may supersede the requirement for a native canopy tree in that location; and,

d. Thirty (30) inch high shrub or hedge material spaced twenty-four (24) inches on center at installation planted on the exterior side of the required fence. (BUILDING-Zoning)

J. LIGHTING

1. All outdoor lighting used to illuminate the premises and identification signs shall be of low intensity, shielded and directed down and away from adjacent properties and streets. (BUILDING/CODE ENFORCEMENT)

2. All outdoor lighting fixtures shall not exceed twenty five **(25)** feet in height, measured from finished grade to highest point. (BUILDING)
3. All outdoor lighting shall be extinguished no later than **10:00** p.m. Security lighting only is excluded from this requirement. (CODE ENFORCEMENT)

K. PARKING

1. To ensure compliance with the requirements of the ULDC, the petitioner shall, prior to certification of a Preliminary Development Plan (PDP) by the Development Review Committee (DRC), amend the PDP to indicate a maximum of **864** parking spaces or obtain a variance from the Board of Adjustment. In the event the ULDC is amended to delete the requirements for MUPD's to limit the maximum number of parking spaces to the minimum required, the petitioner shall be relieved of this requirement. (ZONING)
2. All loading docks and/or loading areas shall be screened from view from the south property line abutting residential uses by a twelve **(12)** foot high wing wall, measured from finished grade to highest point, consistent with the color and character of the principle structure. (BUILDING-Zoning)
3. Overnight storage or parking of delivery vehicles or trucks shall not be permitted on site, except within the loading and delivery areas designated on the site plan. (CODE ENFORCEMENT)

L. SIGNS

1. Free standing point of purchase signs fronting on Jog/Carter Road shall be limited as follows:
 - a. Maximum of one **(1)** sign; and.
 - b. Monument style only. (BUILDING)
2. Free standing point of purchase signs fronting on West Atlantic Avenue shall be limited as follows:
 - a. Point of Purchase (project identification) signs:
 - (1) Maximum of two **(2)** signs; and,
 - (2) Monument style only.
 - b. Outparcel identification signs:
 - (1) Maximum sign height, measured from finished grade to highest point - ten **(10)** feet;
 - (2) Maximum sign face area per side - **100 square** feet or as established by the ULDC, whichever is less;
 - (3) Maximum number of signs - one **(1)** per outparcel, a total of four **(4)** signs; and,
 - (4) Monument style only. (BUILDING)
3. The petitioner shall provide directional signage for adjacent commercial developments at each required **cross** access easement. Prior to final site plan certification by the Development Review Committee (DRC), the petitioner shall amend the site plan to indicate all required directional signage. (ZONING)

M. USE LIMITATION (FAST FOOD RESTAURANTS ONLY)

1. Fast food restaurants shall provide interior, air conditioned sit down eating facilities as follows:
 - a. A minimum of forty (40) seats for one; and
 - b. **A minimum of sixty (60) seats for the second. (BUILDING)**
2. Retail business activity for all permitted fast food restaurants shall be limited to the hours of 6:00 a.m. to 10:00 p.m. daily. (CODE ENFORCEMENT)
3. All permitted fast food restaurants shall be limited to **only** one (1) drive through lane each. (ZONING/BUILDING)
4. **No** deliveries or waste collection shall be permitted prior to 6:00 a.m. or later than 10:00 p.m. daily. (CODE ENFORCEMENT)
5. Fast food restaurants shall not have outdoor seating. (BUILDING/CODE ENFORCEMENT-Zoning)
6. Fast food restaurants shall **not have** outdoor play equipment or areas. (BUILDING/CODE ENFORCEMENT-Zoning)

N. COMPLIANCE

1. Failure to comply with any of these conditions of approval at any time may result in:
 - a. The denial or revocation of a building permit; the issuance of a stop work order; cease and **desist** order; the denial of a Certificate of Occupancy on any building or structure; or the denial or revocation of any permit or approval for any developer; owner, commercial-owner, lessee, or **user** of the subject property; and/or
 - b. The revocation of the Conditional Use and any/or zoning which was approved concurrently with the Conditional Use;
 - c. **A** requirement of the development to conform with updated standards of development, applicable 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;
 - d. Referral to code enforcement; and/or
 - e. Imposition of entitlement density or intensity.

Appeals of any **departmental-administrative** actions hereunder may be taken to the Palm Beach County Board of Adjustment or as otherwise provided in the Unified Land Development Code (ULDC), as amended. Appeals of any revocation of Conditional Use, Rezoning, or other actions based on a Board of County Commission decision, shall be by petition for writ of certiorari to the Fifteenth Judicial Circuit. (MONITORING)