

RESOLUTION APPROVING ZONING APPLICATION DOA2005-988
(CONTROL NUMBER 1982-152)
DEVELOPMENT ORDER AMENDMENT
APPLICATION OF MALASKY PROPERTIES
BY GREENBERG TRAURIG, PA, AGENT
(LANDMARK AUTOCARE)

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 2 of the Palm Beach County Unified Land Development Code, have been satisfied; and

WHEREAS, Zoning Application DOA2005-988 was presented to the Board of County Commissioners at a public hearing conducted on February 23, 2006; 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 2.E (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 has considered the findings in the staff report and 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.
8. This Development Order Amendment has a concurrency determination and 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 2.K.3.b 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 Application DOA2005-988, the application of Malasky Properties, by Greenberg Traurig, PA, agent, for a Development Order Amendment to modify a condition of approval 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 February 23, 2006, subject to the conditions of approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Marcus moved for the approval of the Resolution.

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

Tony Masilotti, Chair	- Aye
Addie L. Greene, Vice Chairperson	- Aye
Karen T. Marcus	- Aye
Jeff Koons	- Aye
Warren H. Newell	- Absent
Mary McCarty	- Aye
Burt Aaronson	- Absent

The Chair thereupon declared that the resolution was duly passed and adopted on February 23, 2006.

Filed with the Clerk of the Board of County Commissioners on 23rd day of February, 2006.

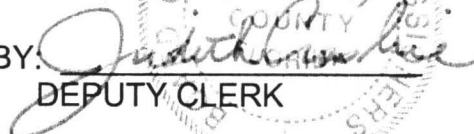
This resolution is effective when filed with the Clerk of the Board of County Commissioners.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

SHARON BOCK, CLERK &
COMPTROLLER

BY: 
COUNTY ATTORNEY

BY: 
DEPUTY CLERK

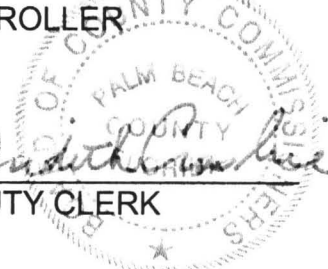


EXHIBIT A

LEGAL DESCRIPTION

Lots 38 to 49, inclusive, less the West 35 feet thereof, MILITARY PARK, HALLS ADDITION, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court, in and for Palm Beach County, Florida, recorded in Plat Book 12, Page 44; said lands situate, lying and being in Palm Beach County, Florida.

AND

Cecil Avenue (now vacated) as shown on the Plat of MILITARY PARK, HALLS ADDITION, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court, in and for Palm Beach County, Florida, recorded in Plat Book 12, Page 44; said lands situate, lying and being in Palm Beach County, Florida, LESS that part of Cecil Avenue lying within 60 feet of the Base Line Survey of State Road 809.

AND

The North 170 feet of the Southwest Quarter (SW 1/4) of the Northwest Quarter (NW 1/4) of the Southeast Quarter (SE 1/4) of Section 24, Township 43 South, Range 42 East, Less the West 60 feet thereof, all being in Palm Beach County, Florida.

LESS HOWEVER THE FOLLOWING PARCEL:

Beginning at the Southwest corner of the above described Parcel; thence, North 01 degrees 23 minutes 24 seconds East, along the East Right-of-Way line of Military Trail, a distance of 28.78 feet; thence South 89 degrees 01 minutes 48 seconds East, a distance of 394.72 feet; thence South 00 degrees 51 minutes 24 seconds West, a distance of 28.76 feet; thence North 89 degrees 01 minutes 48 second West, along the South line of the said North 170 feet, a distance of 394.99 feet to the Point of Beginning.

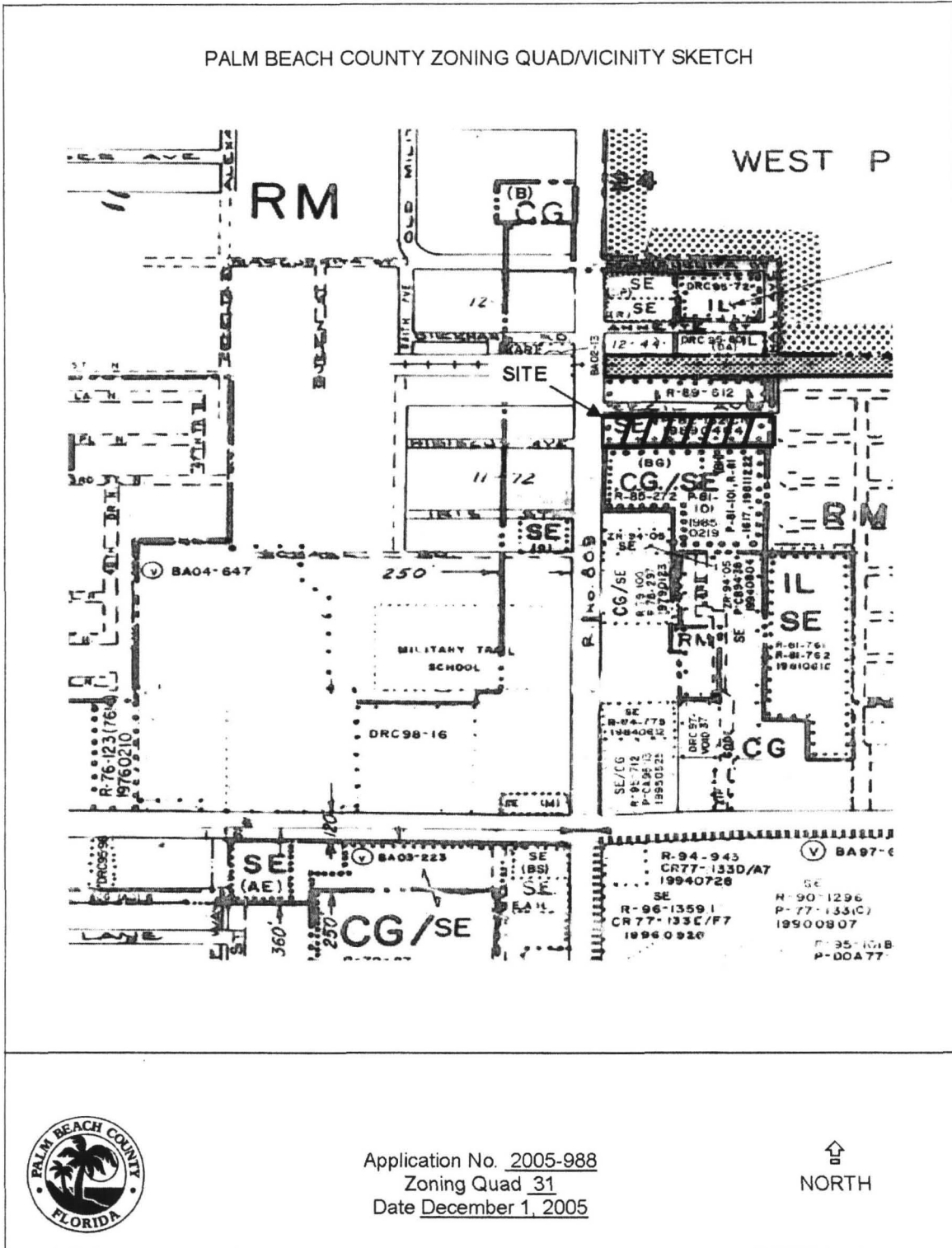
Containing 4.15 acres, more or less.

(180,869 square feet)

SUBJECT to easements, restrictions, reservations and Right-of-Way of record.

EXHIBIT B

VICINITY SKETCH



Application No. 2005-988
 Zoning Quad 31
 Date December 1, 2005



EXHIBIT C

CONDITIONS OF APPROVAL

ALL PETITIONS

1. All previous conditions of approval applicable to the subject property, as contained in Resolutions R-83-204, (Petition 82-152); R-87-230, (Petition 82-152(A)); R-87-1187, (Petition 82-152(B)); and R-89-612, (Petition 82-152(C)) have been consolidated as contained herein. The property owner shall comply with all previous conditions of approval and deadlines previously established by Article 2.E of the ULDC and the Board of County Commissioners, unless expressly modified. (ONGOING: MONITORING - Zoning)
2. Development of the site is limited to the uses and site design as approved by the Board of County Commissioners. The approved Site Plan is dated September 29, 2005. All modifications must be approved by the Board of County Commissioners unless the proposed changes are required to meet conditions of approval or are in accordance with the ULDC. (ONGOING: ZONING - Zoning)
3. Condition 1. of Resolution R-87-230, Petition 82-152(A) which currently states:

The developer shall comply with all previous conditions of approval unless expressly modified herein. (ONGOING: MONITORING-Zoning)

Is hereby deleted. [REASON: Replaced by All Petitions 1.]
4. Condition 1. of Resolution R-87-1187, Petition 82-152(B) which currently states:

Petitioner shall comply with all conditions of previous approvals unless expressly modified herein. (ONGOING: MONITORING-Zoning)

Is hereby deleted. [REASON: Replaced by All Petitions 1.]
5. Condition 1. of Resolution R-89-612, Petition 82-152(C) which states:

The developer shall comply with all previous conditions of approval unless expressly modified herein. (ONGOING: MONITORING-Zoning)

Is hereby deleted. [REASON: Replaced by All Petitions 1.]

ENGINEERING

1. Petitioner shall retain onsite 85% of the stormwater runoff generated by a three (3) year storm per requirements of the Permit Section, Land Development Division. (ONGOING: ENG-Eng)(Previous Condition 3. of Resolution R-83-204, Petition 82-152)
2. Within ninety (90) days of approval the ultimate right of way for Military Trail, 60 feet from centerline, shall be conveyed to Palm Beach County. (Approximately an additional 6 feet of right of way.) (DATE: MONITORING-Eng) (Previous Condition 4. of Resolution R-83-204, Petition 82-152)
3. Developer shall contribute the sum of Two Thousand Two Hundred and Twenty Five Dollars (\$2,225.00) toward the cost of meeting this project's direct and identifiable traffic impact, to be paid at the rate of \$.12 per square foot at the time of issuance of the building permit(s). (BLDG

PERMIT:MONITORING-Eng)(Previous Condition 5. of Resolution R-83-204, Petition 82-152)

4. Developer shall clarify the access to Hall Avenue prior to site plan approval. (ONGOING: ENG-Eng) (Previous Condition 7.of Resolution R-83-204, Petition 82-152)
5. The Developer 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 Fair Share Fee for this project presently is \$917,092.00 (638 trips x \$926.79 per trip). (ONGOING: ENG-Eng) (Previous Condition 5. of Resolution R-87-230, Petition 82-152(A))
6. Based on the Traffic Performance Standards (Category "B"), the Developer shall contribute an additional \$4,273.00 toward Palm Beach County's existing Roadway Improvement Program, these total funds of \$21,365.00 to be paid prior to June 1, 1987 or prior to the issuance of a building permit whichever shall first occur. (BLDG PERMIT:MONITORING-Eng)(Previous Condition 6. of Resolution R-87-230, Petition 82-152(A))
7. The property owner shall reconstruct the existing medians on Military Trail adjacent to this site to provide for a left turn lane, north approach on Military Trail at the project's south entrance and a left turn lane, south approach on Military Trail at the property's north property line. (ONGOING: ENG-Eng) (Previous Condition 7. of Resolution R-87-230, Petition 82-152(A))
8. The developer shall retain the stormwater runoff in accordance with all applicable agency requirements in effect at the time of the permit application. However, at a minimum, this development shall retain onsite three (1) inches of the stormwater runoff generated by a three (3) year-one (1) hour storm as required by the Permit Section, Land Development Division. The drainage system shall be maintained in an acceptable condition as approved by the County Engineer. In the event that the drainage system is not adequately maintained as determined by the County Engineer, this matter will be referred to the Code Enforcement Board for enforcement.

If required by the County Engineer or the South Florida Water Management District the developer shall design the drainage system such that storm water runoff from the parking areas and paved surfaced shall be separate from those areas which may contain hazardous or undesirable waster from the proposed site. (ONGOING: ENG-Eng) (Previous Condition 11. of Resolution R-89-612, Petition 82-152(C))

9. 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 Fair Share Fee for this project presently is \$18,164.00 (678 trips X \$26.79 per trip) (ONGOING: ENG-Eng) (Previous Condition 12. of Resolution R-89-612, Petition 82-152(C))
10. In addition, the petitioner shall contribute the amount of 51,817.0(3 as established in Article V Section (Insignificant Project Standard) of the Traffic Performance Standards Code. These total funds of \$19,981.00 shall be paid prior to the issuance of the first Building Permit.(BLDG PERMIT: ENG-Eng) (Previous Condition 13. of Resolution R-89-612, Petition 82-152(C))

HEALTH

1. Condition 14. of Resolution R-89-612, Petition 82-152(C) which currently states:

Generation and disposal of hazardous effluents into sanitary sewerage system shall be prohibited unless adequate pretreatment facilities approved by the Florida Department of Environmental Regulation (FDER) and Agency responsible for sewage works are constructed and used by project tenants or owners generating such effluents.

Is hereby amended to read:

The property owners and operators of facilities generating industrial, hazardous or toxic waste shall not deposit or cause to be deposited any such waste into the sanitary sewer system unless adequate pretreatment facilities approved by the Florida Department of Environmental Protection, the Palm Beach County Health Department, and the agency responsible for sewage works are provided and used. (ONGOING: CODE ENF-Health)

2. The property owners shall take reasonable precautions during the development of this project to insure that fugitive particulates (dust particles) from this project do not become a nuisance to neighboring properties. (ONGOING: CODE ENF-Health) (Previous Condition 1. of Resolution R-83-204, Petition 82-152)
3. The property owners shall take reasonable precaution to insure that run-off from this project will not pollute adjacent or nearby surface waters. (ONGOING: HEALTH-Health) (Previous Condition 2. of Resolution R-83-204, Petition 82-152)
4. Condition 4. of Resolution R-87-230 of Petition 82-152(A) which currently states:

Since sewer and water service is available to the property, neither septic tank nor well shall be approved for use on the subject property. (ONGOING: CODE ENF-Health)

Is hereby deleted. [REASON: Repetition of Health Conditions 5 and 6.]

5. Since sewer service is available to the property, septic tank shall not be approved for use on said property. (ONGOING: CODE ENF-Health) Previous Condition 15. of Resolution R-89-612, Petition 82-152(C))
6. Since water service is available to the property, a potable water well shall not be approved for use on said property. (ONGOING: CODE ENF-Health) (Previous Condition 16. of Resolution R-89-61, Petition 82-152(C))

LANDSCAPE - STANDARDS

1. Prior to the issuance of a Certificate of Occupancy (CO) for Building "C", the property owner shall submit a Landscape Plan to the Landscape Section for review and approval of the Affected Area. The Plan shall be prepared in compliance with all ULDC requirements and the landscape conditions as contained herein. (BLDG PERMT:LANDSCAPE-Zoning)
2. A minimum of sixty-five (65) percent of canopy trees to be planted in the landscape buffers shall be native and meet the following minimum standards at installation:
 - a. tree height: Fourteen (14) feet;
 - b. trunk diameter: three and one-half (3.5) inches measured at four and one-half (4.5) feet above grade;
 - c. canopy diameter: Seven (7) feet – diameter shall be determined by the average canopy radius measured at three (3) points from the trunk to the outermost branch tip. Each radius shall measure a minimum of three and one-half (3.5) feet in length; and,

- d. credit may be given for existing or relocated trees provided they meet ULDC requirements. (BLDG PERMIT:LANDSCAPE-Zoning)
3. A group of three (3) or more palms may not supersede the requirement for a canopy tree in that location, unless specified herein. (BLDG PERMIT: LANDSCAPE-Zoning)
4. Prior to final approval of the site plan by the Development Review Officer, (DRO), the property owner shall revise the plan to show foundation planting area and terminal islands that are in compliance with ULDC requirements. (DRO: ZONING-Zoning)

LANDSCAPING

1. The perimeter buffer separating the development from the adjacent Seminole Colony Mobile Home Park shall be defined as follows:
 - a. a solid masonry wall shall be constructed with a minimum height of eight (8) feet.
 - b. Trees shall be planted along the interior of this wall. Trees shall be of a suitable species as determined by the Zoning Division. Trees shall be a minimum of twelve (12) feet in height on planting spaced twenty (20) feet on center. (BLDG PERMIT: LANDSCAPE-Zoning) (Previous Condition 16. of Resolution R-87-230, Petition 82-152(A))
2. The additional five (5) feet provided west of the two structures nearest Military Trail will be reserved for landscape. (BLDG PERMIT: LANDSCAPE-Zoning) (Previous Condition 10. of Resolution R-89-612, Petition 82-152(C))
3. The trees to be planted along Military Trail shall be native canopy trees planted ten (10) feet to twelve (12) feet overall height at the time of planting. (BLDG PERMIT: LANDSCAPE-Zoning)(Previous Condition 19. of Resolution R-89-612, Petition 82-152(C))
4. Prior to site plan certification, the site plan shall be amended to reflect the following:
 - a. a minimum of one (1) tree in each terminal island; and
 - b. a solid six (6) foot high fence, wall or shrub hedge along the easternmost portion of the South property line. (DRO: LANDSCAPE-Zoning) (Previous Condition 3. of Resolution R-87-230, Petition 82-152(A))
5. The property owner shall repair the 8-foot high solid masonry wall as required under Condition 1. This wall shall be repaired or reconstructed to a condition acceptable to the Landscape Section of the Zoning Division prior to the issuance of a Certificate of Occupancy for Building C or April 1, 2006, whichever ever occurs first. (CO/DATE: MONITORING-Landscape)

LIGHTING

1. All exterior lighting shall be low intensity and shall be directed away from adjacent residential uses. (ONGOING: CODE ENF-Zoning)(Previous Condition 13. of Resolution R-87-230, Petition 82-152(A))
2. Outdoor lighting used to illuminate the premises shall be low intensity and directed away from adjacent properties and streets, shining only on subject site. (ONGOING: CODE ENF-Zoning) (Previous Condition 3. of Resolution R-89-612, Petition 82-152(C))

SIGNAGE

1. Condition 14. of Resolution R-87-230, Petition 82-152(A) which currently states:

No off premise signs shall be permitted on site. (ONGOING: CODE ENF-Zoning)

Is hereby deleted. [REASON: Code Requirement.]
2. No off-premise signs shall be permitted on site. (ONGOING: CODE ENF-Zoning) (Previous Condition 7. of Resolution R-89-612, Petition 82-152(C))
3. Prior to final approval of the site plan by the Development Review Officer, (DRO), the property owner shall submit a Master Sign Plan including all existing freestanding and wall signs, including building permit numbers, for existing signs. (BLDG PERMIT-BLDG-Zoning)
4. Any future replacement of signs, or new signs shall be limited to the following:
 - a. maximum sign height, measured from finished grade to highest point - ten (10) feet;
 - b. maximum sign face area per side - one hundred (100) square feet;
 - c. style - monument style only; and,
 - d. signs shall be limited to identification of tenants only. (BLDG PERMIT: BLDG - Zoning)

SITE DESIGN

1. Prior to site plan certification, cross-access agreements shall be recorded, and shall be subject to approval by the County Attorney. (DRO: CO-ATTY-Zoning)(Previous Condition 2. of Resolution R-87-230, Petition 82-152(A))
2. Condition 17. of Resolution R-89-612, Petition 82-152(C) which currently states:

Additional Staff Recommends Petitioner shall provide an additional five (5) feet of maneuvering distance to aid in reducing vehicular circulation problems in two areas:
 - a. between 15,200 square feet office warehouse and auto service structures, from 50 feet to 55 feet
 - b. North of the 15,000 square foot auto service structure and property line from twenty (20) to twenty-five (25) feet. (DRO: ZONING- Zoning)
Is hereby deleted. [REASON: Completed.]

USE LIMITATIONS

1. Condition 8. of Resolution R-87-230, Petition 82-152(A) which currently states:

Retail and consumer services uses of the facility shall be limited to sale of motor vehicle parts and tires, transmission repair, muffler shop and similar uses. No sale of new or used motor vehicles, trailers, or boats shall be permitted on site. (ONGOING: CODE ENF-Zoning)

Is hereby amended to read:

Retail and consumer services uses of the facility shall be limited to sale of motor vehicle parts and tires, transmission repair, muffler shop and similar uses. No sale of new or used motor vehicles, trailers, or boats shall be permitted on site except for Building "C". (ONGOING: CODE ENF-Zoning)

2. General retail sales of all terrain vehicles (ATV's), jet skis, and motorcycles shall be limited to Building "C" only with an indoor showroom only. (ONGOING: CODE ENF-Zoning)

3. Condition 9. of Resolution R-87-230, Petition 82-152(A) which currently states:

The land uses indicated in Condition No. 8 above shall be restricted to the single building closest to Military Trail. (ONGOING: CODE ENF-Zoning)

Is hereby deleted. [REASON: No longer applicable.]

4. Condition 18. of Resolution R-89-612, Petition 82-152(C) which currently states:

The land uses indicated in Condition No. 8 above shall be restricted to the three (3) buildings closest to Military Trail." (ONGOING: CODE ENF-Zoning)

Is hereby deleted. [REASON: No longer applicable.]

5. No outdoor storage of disable or inoperative vehicles shall be permitted on site. (ONGOING: CODE ENF-Zoning) (Previous Condition 10. of Resolution R-87-230, Petition 82-152(A))

6. No retail sales shall be permitted in the office warehouse building. (ONGOING: CODE ENF-Zoning) (Previous Condition 11. of Resolution R-87-230, Petition 82-152(A))

7. Condition 12 of Resolution R-87-230, Petition 82-152(A) which currently states:

There shall be no outdoor loudspeaker systems permitted on site. (ONGOING: CODE ENF-Zoning)

Is hereby deleted. [REASON: Repetition of Use Condition 8.]

8. No outdoor loud speaker system shall be permitted on site. (ONGOING: CODE ENF-Zoning) (Previous Condition 5. of Resolution R-89-612, Petition 82-152(C))

9. Condition 15. of Resolution R-87-230, (Petition 82-152(A)) which currently states:

Operation of the auto repair facility shall be limited to the hours of 7:00 a.m. to 7:00 p.m. daily. Operation shall not be permitted on holidays or Sundays. (ONGOING: CODE ENF-Zoning)

Is hereby deleted. [REASON: Amended in R-87-1187 and R82-152(B)]

10. Operation of the Auto Repair Facility shall be limited to the hours from 7:00 A.M. to 10:00 P.M. Monday through Saturday and shall be closed on Sundays, Christmas, Thanksgiving and New Year's Day. (ONGOING: CODE ENF-Zoning) (Previous Condition 2. of Resolution R-87-1187, Petition 82-152(B))

11. The petitioner shall amend site plan to show no recreation vehicle storage on site. (ONGOING: CODE ENF-Zoning) (Previous Condition 4. of Resolution R-89-612, Petition 82-152(C))

12. No outside storage of disassembled vehicles or parts shall be permitted on site. (ONGOING: CODE ENF-Zoning) (Previous Condition 6. of Resolution R-89-612, Petition 82-152(C))
13. Condition 8. of Resolution R-89-612, Petition 82-152(C) which currently states:

Parking of vehicles shall be limited to those areas designated for parking. (ONGOING: CODE ENF-Zoning)

Is hereby deleted. [REASON: Code requirement.]
14. There shall be no outdoor repair of vehicles. (ONGOING: CODE ENF-Zoning) (Previous Condition 9. of Resolution R-89-612, Petition 82-152(C))

UTILITIES

1. If any relocations/modifications to the County's existing facilities are required that are a direct or indirect result of the development, the property owner shall pay for the complete design and construction costs associated with these relocations/modifications. (ONGOING: PBCWUD-PBCWUD)

COMPLIANCE

1. In granting this approval, the Board of County Commissioners relied upon the oral and written representations of the petitioner 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; 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 ULDC 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; 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 a 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 Article 2.E of the ULDC, in response to any flagrant violation and/or continued violation of any condition of approval.

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 an Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment or other actions based on a Board of County Commission decision shall be by petition for writ of certiorari to the Fifteenth Judicial Circuit. (ONGOING: MONITORING - Zoning)