

RESOLUTION NO. R-2007-1035

RESOLUTION APPROVING ZONING APPLICATION DOA2006-1390
(CONTROL NUMBER 1973-116)
DEVELOPMENT ORDER AMENDMENT
APPLICATION OF VSH REALTY, INC.
BY GREENBERG TRAUIG, P.A., AGENT
(CUMBERLAND FARMS)

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, as amended, is authorized and empowered to consider applications relating to zoning; and

WHEREAS, the notice and public hearing requirements, as provided for in Article 2 (Development Review Process) of the Palm Beach County Unified Land Development Code (Ordinance 2003-067, as amended) have been satisfied; and

WHEREAS, Zoning Application DOA2006-1390 was presented to the Board of County Commissioners at a public hearing conducted on June 28, 2007; and

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

WHEREAS, this approval is subject to Article 2.E (Monitoring), 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 purposes, goals, objectives and policies of the Palm Beach County Comprehensive Plan, including standards for building and structural intensities and densities, and intensities of use.
2. This Development Order Amendment complies with relevant and appropriate portions of Article 4.B (Supplementary Use Standards) of the Palm Beach County Unified Land Development Code. This Development Order Amendment also meets applicable local land development regulations.
3. 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.
4. The proposed design, with conditions as adopted, minimizes adverse effects, including visual impact and intensity of the proposed use on adjacent lands.
5. This Development Order Amendment has a concurrency determination and complies with Article 2.F (Concurrency - Adequate Public Facility Standards) of the ULDC.
6. 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.

7. This Development Order Amendment, with conditions as adopted, will result in logical, timely and orderly development patterns.
8. This Development Order Amendment, with conditions as adopted, complies with standards imposed on it by all other applicable provisions of the Palm Beach County Unified Land Development Code for use, layout, function, and general development characteristics.
9. This Development Order Amendment, with conditions as adopted, is consistent with applicable Neighborhood Plans.
10. The applicant has demonstrated sufficient justification that there are changed circumstances, which would require the Development Order Amendment.

WHEREAS, Article 2.K.3.b (Action by BCC) 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 DOA2006-1390, the application of VSH Realty, Inc., by Greenberg Traurig, PA, agent, for a Development Order Amendment to reconfigure site plan, reduce building square footage, add gas pumps and modify/delete conditions 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 June 28, 2007, subject to the conditions of approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Aaronson moved for the approval of the Resolution.

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

Addie L. Greene, Chairperson	- Aye
John F. Koons, Vice Chair	- Aye
Karen T. Marcus	- Aye
Warren H. Newell	- Aye
Mary McCarty	- Aye
Burt Aaronson	- Aye
Jess R. Santamaria	- Aye

The Chairperson thereupon declared that the resolution was duly passed and adopted on June 28, 2007.

Filed with the Clerk of the Board of County Commissioners on 28th day of June.

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

BY: *[Signature]*
COUNTY ATTORNEY

SHARON BOCK,
CLERK & COMPTROLLER

BY: *[Signature]*
DEPUTY CLERK




EXHIBIT A
LEGAL DESCRIPTION

Commencing at the Southeast corner of Section 25, Township 47 South, Range 41 East, Palm Beach County, Florida, as surveyed by the State of Florida in May and June, 1912 and as shown on the Right-of-Way Map of the Florida State Road Department in their survey of State Road No. 7, in February 1941, as Project 5268; run (for convenience the South line of said Section 25, is assumed to bear North 88 degrees 54'16" West and all other bearings mentioned herein are relative thereto) thence North 88 degrees 54'16" West along South line of Section 25, a distance of 148.58 feet to the Westerly right-of-way line of State Road 7; thence North along said right-of-way line a distance of 43.53 feet to an angle point; thence North 0 degrees 28'33" East continuing along said right-of-way line a distance of 501.26 feet to the POINT OF BEGINNING of the herein described parcel of land; thence North 89 degrees 04'09" West along the Northerly right-of-way line of Sandlefoot Boulevard West a distance of 131.61 feet to the beginning of a curve concave to the South having a radius of 793.94 feet; thence Westerly along the arc of said curve subtending a central angle of 13 degrees 41'24", a distance of 189.70 feet to a point in the Easterly boundary of lands shown and described in Official Records Book 1955, Pages 1599 and 1600, of the Public Records of Palm Beach County, Florida; thence departing from Sandlefoot Boulevard West and running along said Easterly boundary North 0 degrees 28'33" East, a distance of 222.55 feet to the Northwesterly corner of the herein described parcel of land; thence South 89 degrees 04'09" East, a distance of 319.68 feet to a point on the aforesaid Westerly right-of-way line of State Road 7; thence South 00 degrees 28'33" West along said right-of way line a distance of 200.00 feet to the POINT OF BEGINNING. LESS the East 99 feet

EXHIBIT C

CONDITIONS OF APPROVAL

ALL PETITIONS

1. Previous Condition A.1 of Resolution 96-003 (Control 73-116) which currently states:

All previous conditions of approval applicable to the subject property, as contained in Resolution R-73-431 (Petition 73-116), and R-86-845 (Petition 73-116(A)), have been consolidated as contained herein. The petitioner shall comply with all previous conditions of approval and deadlines previously established by Section 5.8 of the 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 Resolution R-96-003 (Control 73-116) 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 or Zoning Commission, unless expressly modified. (ONGOING: MONITORING - Zoning)

2. Development of the site is limited to the site design approved by the Board of County Commissioners. The approved site plan is dated March 19, 2007. All modifications must be approved by the Board of County Commissioners or Zoning Commission unless the proposed changes are required to meet conditions of approval or are in accordance with the ULDC. (ONGOING: ZONING - Zoning)

ARCHITECTURAL REVIEW

1. At time of submittal for final approval by the Development Review Officer (DRO), the architectural elevations shall be submitted simultaneously with the site plan for final architectural review and approval. The elevations and the site plan shall be designed to be consistent with Article 5.C. of the ULDC. Development shall be consistent with the approved architectural elevations and the approved DRO site plan. (DRO: ARCH REVIEW – Arch Review)
2. Gas station canopy design shall be consistent with the following standards:
 - a. A maximum height of twenty-five (25) feet with a pitched roof. Roofs may be peaked or hip on deck with a minimum slope of 3:12 and a maximum slope of 5:12. The fascia for any canopy may not exceed twenty percent (20%) of the overall roof height;
 - b. The clearance of the canopy shall be a maximum of sixteen (16) feet, measured from finished grade to the underside of the canopy;
 - c. All lighting for the gas station canopy shall be recessed; and,
 - d. Canopy signage shall be limited to a maximum of one (1) wall sign per right-of-way frontage with a maximum height of eighteen (18) inches. (DRO: ARCH REVIEW – Arch Review)
3. The exterior elevations of the building and canopy shall integrate the gutters and downspouts into the architectural design of the building. Painting the gutters shall not constitute integration. (DRO: ARCH REVIEW – Arch Review)

ENGINEERING

1. Condition Number E.1 of Resolution R-96-003 which currently states:

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, Zoning Petition 73-116(B), to be paid at the time of issuance of the Building Permit presently is \$22,715.00 (413 additional trips X \$55.00 per trip). (BLDG PERMIT:IMPACT FEE COORDINATOR)

Is hereby deleted. Reason: [Impact fees are now a code requirement.]

2. CONVEYANCE OF RIGHT OF RIGHT OF WAY

The property owner shall provide to the Palm Beach County Land Development Division a road right of way deed and all associated documents as required by the County Engineer for a 25 foot corner clip at SR 7 and Sandalfoot Boulevard. Right of way deed and associated documents shall be provided and approved prior to the issuance of a Building Permit.

Right of way conveyance shall be free of all encroachments and encumbrances. 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. The Grantor further warrants that the property being conveyed to Palm Beach County meets all appropriate and applicable environmental agency requirements. In the event of a determination of contamination which requires remediation or clean up on the property now owned by the Grantor, the Grantor agrees to hold the Grantee harmless and shall be responsible for all costs of such clean up, including but not limited to, all applicable permit fees, Engineering or other expert witness fees including Attorney's fees as well as the actual cost of the clean up. The Property Owner shall not record these required deeds or related documents. After final acceptance, Palm Beach County shall record all appropriate deeds and documents. (BLDG. PERMIT: MONITORING-Eng)

3. Landscape Within the Median of SR 7

- a. The Property Owner shall design, install and perpetually maintain the median landscaping within the median of all abutting right of way of SR 7. This landscaping and irrigation shall strictly conform to the specifications and standards for the County's Only Trees, Irrigation, and Sod (OTIS) program. Additional landscaping beyond OTIS requires Board of County Commissioners approval. Median landscaping installed by Property Owner shall be perpetually maintained by the Property Owner, his successors and assigns, without recourse to Palm Beach County, unless the Property Owner provides payment for maintenance as set forth in Paragraph D below. (ONGOING: ENG - Eng)
- b. The necessary permit(s) for this landscaping and irrigation shall be applied for prior to the issuance of the first building permit. (BLDG PERMIT: MONITORING-Eng)
- c. All installation of the landscaping and irrigation shall be completed prior to the issuance of the first certificate of occupancy. (CO: MONITORING -Eng)
- d. At Property Owner's option, when and if the County is ready to install OTIS on the surrounding medians of this roadway adjacent to the Property Owner installed landscaping, payment for the maintenance may be provided to the County. The payment shall be in the amount and manner that complies with the schedule for such payments that exists on the date payment is made. Once payment has been provided, Palm Beach County shall assume the maintenance responsibility for the OTIS landscaping and irrigation that has been installed by the Property Owner. The Property Owner shall first be required to correct any deficiencies in the landscaping and irrigation. This

option is not available to medians with additional landscaping beyond OTIS standards, unless those medians are first brought into conformance with OTIS standards by the Property Owner. (ONGOING: ENG - Eng)

- e. Alternately, at the option of the Property Owner, and prior to the issuance of a Building Permit, the Property Owner may make a contribution to the County's Only Trees Irrigation and Sod, OTIS program, unincorporated thoroughfare beatification program. This payment, for the County's installation of landscaping and irrigation on qualifying thoroughfares shall be based on the project's front footage along SR 7. This payment shall be in the amount and manner that complies with the schedule for such payments as it currently exists or as it may from time to time be amended. (ONGOING: ENG - Eng)
4. 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 June 28, 2010. 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 Article 2, Section E of the Unified Land Development Code. (DATE: MONITORING-Eng)

ZONING – LANDSCAPING

1. Prior to the issuance of a building permit, the property owner shall submit a Landscape Plan to the Landscape Section for review and approval. The Plan(s) shall be prepared in compliance with all landscape related conditions of approval as contained herein. (BLDG PERMIT: LANDSCAPE - Zoning)
2. Previous Condition B.1 of Resolution 96-003 (Control 73-116), which currently states:

All trees required to be planted within the Sandalfoot Boulevard and State Road 7 (US 441) buffers shall meet the following minimum standards at time of 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.
- d. Trees shall be native evergreen species planted at an equivalent of one tree per thirty (30) linear feet of property line. Credit shall be given for existing trees provided they meet current ULDC requirements. (CO:LANDSCAPE-Zoning)

Is hereby amended to read:

A minimum of fifty (50) percent of all new and replacement trees to be planted in the landscape buffers shall 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. All palms required to be planted on the property by this approval shall meet the following minimum standards at installation:
 - a. palm heights: twelve (12) feet clear trunk;
 - b. clusters: staggered heights twelve (12) to eighteen (18) feet; and,
 - c. credit may be given for existing or relocated palms provided they meet current ULDC requirements. (BLDG PERMIT: LANDSCAPE - Zoning)
4. 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)
5. Field adjustment of berm and plant material locations may be permitted to provide pedestrian sidewalks/bike paths and to accommodate transverse utility or drainage easements crossings and existing vegetation. (BLDG PERMIT: LANDSCAPE - Zoning)
6. Prior to the issuance of a Building Permit for the convenience store the property owner shall replace all dead and missing plant materials on the entire subject property. (BLDG PERMIT: LANDSCAPE - Zoning)

ZONING - LANDSCAPING-ALONG THE EAST PROPERTY LINE (FRONTAGE OF STATE ROAD 7)

7. LANDSCAPING

In addition to the code requirements, landscaping along the east property line shall be upgraded to include:

- a. a minimum twenty (20) foot wide landscape buffer strip. No width reduction or easement encroachment shall be permitted;
- b. a minimum two (2) to three (3) foot high undulating berm with an average height of two and one-half (2-1/2) feet; and,
- c. one (1) palm for each for each thirty (30) linear feet of the property line with a maximum spacing of sixty (60) feet between clusters. (BLDG PERMIT: LANDSCAPE - Zoning)

ZONING – LANDSCAPING ALONG THE SOUTH PROPERTY LINE (FRONTAGE OF SANDALFOOT BOULEVARD)

8. In addition to the code requirements, landscaping along the south property line shall be upgraded to include:
 - a. a minimum one and one-half (1-1/2) to two and one-half (2-1/2) foot high undulating berm with an average height of two (2) feet ; and,
 - b. one (1) palm for each for each thirty (30) linear feet of the property line with a maximum spacing of sixty (60) feet between clusters. (BLDG PERMIT: LANDSCAPE - Zoning)

ZONING – LANDSCAPING ALONG THE WEST PROPERTY LINE (ABUTTING RESIDENTIAL)

9. In addition to code requirements, landscaping along the west property line shall be upgraded to include:
 - a. a six (6) foot high opaque concrete panel wall. Height of the wall shall be measured from the highest grade of the two adjoining properties or from the nearest adjacent finished floor of the proposed structure. Method of height shall be finalized subject to the review and approval by the Landscape Section to ensure screening effect is achieved for the adjacent property. Both sides of the wall shall be given a finished architectural treatment that is

consistent with the color and style of the principal structure (BLDG PERMIT:
LANDSCAPE - Zoning)

ZONING - LANDSCAPING

10. Previous Condition B.2 of Resolution 96-003 (Control 73-116) which currently states:

All hedge material required to be planted within the Sandalfoot Boulevard and State Road 7 (US 441) buffers shall meet the following minimum standards:

- a. Shrub and/or hedge material shall be thirty (30) inch high spaced no more than twenty four (24) inches on center at time of installation.
- b. Hedge material shall be maintained at a minimum height of thirty-six (36) inches. (CO:LANDSCAPE-Zoning)

Is hereby deleted [REASON: superseded by current code and variances]

11. Previous Condition B.3. of Resolution 96-003 (Control 73-116) which currently states:

All landscaping required to be planted within the Sandalfoot Boulevard and State Road 7 (US 441) buffers shall be installed prior to December 1, 1996 or issuance of Certificate of Occupancy. (DATE/CO: MONITORING/LANDSCAPE-Zoning)

Is hereby deleted [REASON: no longer applicable]

12. At time of submittal for final approval by the Development Review Officer (DRO), the terminal islands located adjacent to the loading area shall be extended to the width of the loading area. The islands shall be planted with a hedge, a minimum of six (6) feet in height, at installation, to effectively screen the loading area. Hedge to be perpetually maintained at six (6) feet in height. (DRO: LANDSCAPE-Zoning)

LIGHTING

1. Previous Condition D.1 of Resolution 96-003 (Control 73-116) which currently states:

All outdoor lighting used to illuminate the subject property shall be of low intensity, shielded and directed down and away from adjacent properties and streets. (CO/ONGOING:BLDG/CODE ENF)

Is hereby deleted [REASON: code requirement]

2. All outdoor lighting fixtures shall not exceed twenty five (25) feet in height, measured from finished grade to highest point. (Previous Condition D.2 of Resolution 96-003, Control 73-116) (BLDG PERMIT: BUILDING-Zoning)
3. All outdoor, freestanding lighting fixtures be setback twenty (20) feet from the west property line. (BLDG PERMIT: BLDG - Zoning)
4. The lighting conditions above shall not apply to proposed security or low voltage landscape/accent type lights used to emphasize plant material. (ONGOING: CODE ENF - Zoning)

SIGNS

1. Previous condition F.1 of Resolution 96-003 (Control 73-116) which currently states:

The subject property shall be limited to one (1) freestanding point of purchase sign located on the northwest corner of Sandalfoot Boulevard and State Road 7 (US 441). The sign shall be in accordance with the following :

- a. Maximum sign height, measured from finished grade to highest point - twenty (20) feet;
- b. Maximum sign face area per side - 100 square feet. (CO:BLDG)

Is hereby amended to read:

Freestanding signs fronting on State Road 7 shall be limited as follows:

- a. maximum sign height, measured from finished grade to highest point - fifteen (15) feet;
- b. maximum sign face area per side - one-hundred (100) square feet;
- c. maximum number of signs - one(1);
- d. style - monument style only; and
- e. location - at the corner of State Road 7 and Sandalfoot Boulevard. (BLDG PERMIT: BLDG - Zoning)

USE LIMITATIONS

1. Prior to final approval by the Development Review Officer (DRO), the site plan shall be amended to indicate facilities for the provision of free air and water for customer convenience. (DRO: ZONING - Zoning)
2. The dumpster shall be located along the west side of the building. (DRO: ZONING - Zoning)

UTILITIES

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

COMPLIANCE

1. Previous condition G.1. of Resolution 96-003 (Control 73-116) which currently states:

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; 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.

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.
(MONITORING)

Is hereby amended to read:

In granting this approval, the Board of County Commissioners relied upon the oral and written representations of the property owner 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.

Departmental administrative actions made pursuant to this condition may be appealed as 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 Circuit Court, Appellate Division, 15th Judicial Circuit of Florida. (ONGOING: MONITORING - Zoning)