

3-0-9

RESOLUTION NO. R-2008- 0684

RESOLUTION APPROVING ZONING APPLICATION DOA-2007-1417
(CONTROL NUMBER 2005-460)
DEVELOPMENT ORDER AMENDMENT
APPLICATION OF Realty Duke
BY MILLER LAND PLANNING, AGENT
(JOG COMMERCE PARK)

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 DOA-2007-1417 was presented to the Board of County Commissioners at a public hearing conducted on April 24, 2008; 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 DOA-2007-1417, the application of Realty Duke, by Miller Land Planning, agent, for a Development Order Amendment to reduce square footage, reconfigure site plan, modify a condition of approval (Landscape), and change 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 24, 2008, 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:

Addie L. Greene, Chairperson	-	Absent
Jeff Koons, Vice Chair	-	Aye
Karen T. Marcus	-	Aye
Robert J. Kanjian	-	Aye
Mary McCarty	-	Aye
Burt Aaronson	-	Aye
Jess R. Santamaria	-	Aye

The Chairperson thereupon declared that the resolution was duly passed and adopted on April 24, 2008.

Filed with the Clerk of the Board of County Commissioners on 24 day of April, 2008.

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

PARCEL 1:

The South 397.5 feet of Tract 4, Block 4, **LESS** that portion thereof conveyed to the Florida State Turnpike Authority by deed recorded in Deed Book 1125, Page 243, of the Public Records of Palm Beach County, Florida of **PALM BEACH FARMS CO. PLAT NO. 3**, Palm Beach County, Florida, 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 2, Pages 45 through 54, inclusive.

PARCEL 2:

TOGETHER WITH easement reserved in the instrument recorded in Official Record Book 1860, Page 995 over the West 30 feet and the East 70 feet of the West 100 feet of the North 60 feet of the South 397.5 feet of the West 1095.85 feet of Tract 4, Block 4, **LESS** that portion thereof conveyed to the Florida State Turnpike Authority by deed recorded in Deed Book 1125, Page 243, of the Public Records of Palm Beach County, Florida of **PALM BEACH FARMS CO. PLAT NO. 3**, Palm Beach County, Florida, 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 2, Pages 45 through 54, inclusive.

EXHIBIT B
VICINITY SKETCH

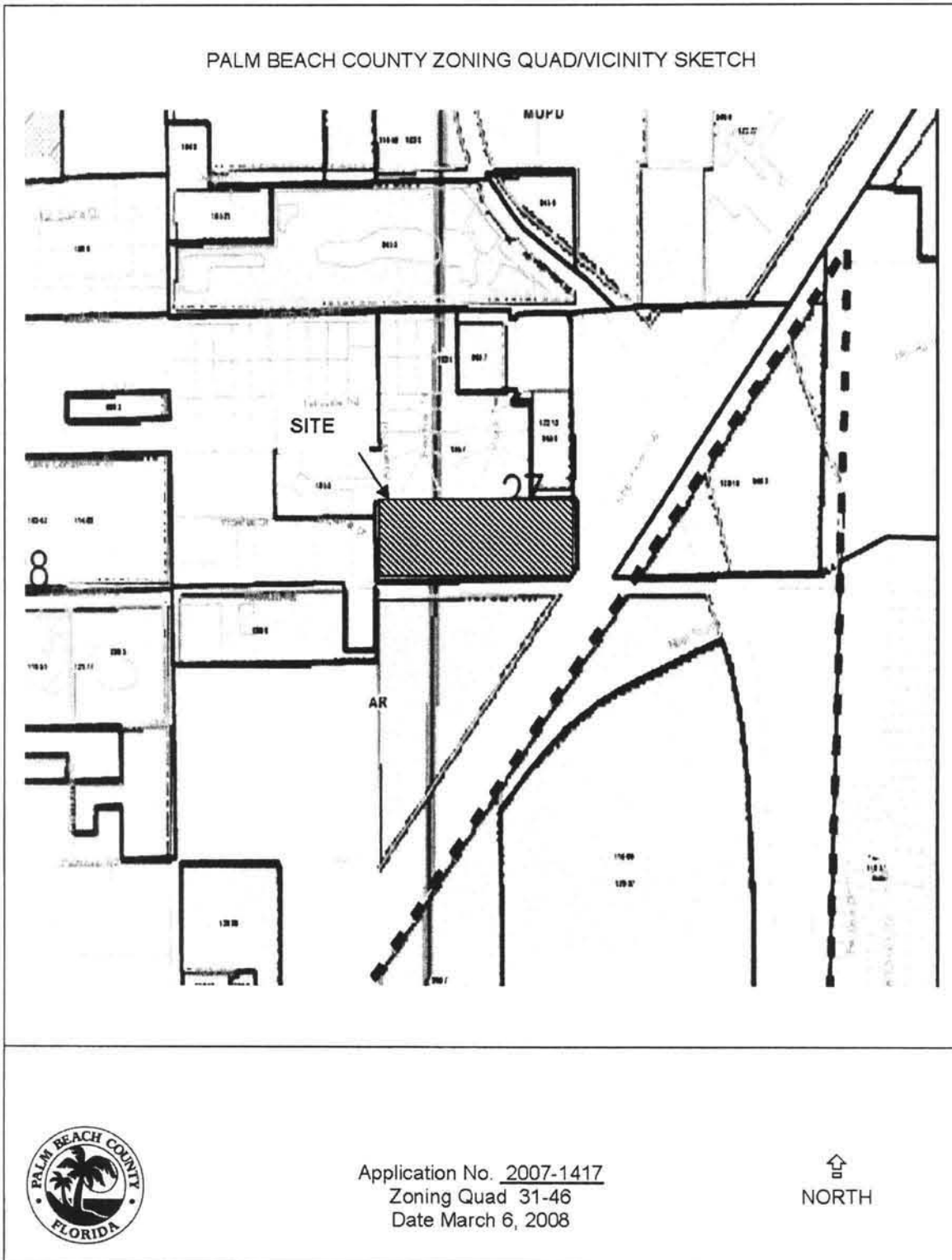


EXHIBIT C

CONDITIONS OF APPROVAL

ALL PETITIONS

1. Previous all petition condition of Resolution R-2006-2554, Control No. 2005-460 which currently states:

Development of the site is limited to the uses and site design approved by the Board of County Commissioners. The approved site plan is dated September 14, 2006. 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)

Is hereby amended to read:

Development of the site is limited to the uses and site design approved by the Board of County Commissioners. The approved site plan is dated January 14, 2008. 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 for all buildings 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 certified DRO site plan. (DRO: ARCH REVIEW-Zoning) Previous Architectural Review Condition 1 of Resolution R-2006-2554, Control No. 2005-460)

ENGINEERING

1. Engineering Condition E1 of Zoning Resolution 2006-2554, which currently states:

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 November 27, 2009. 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)

Is hereby amended to read:

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 January 1, 2011. 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)

2. CORRIDOR 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 the north-south access road along the projects east property line. This additional right of way shall be 80 feet in width on an alignment approved by the County Engineer. All right of way deed(s) and associated documents shall be provided and approved prior to November 1, 2008 or prior to the issuance of a Building Permit whichever shall first occur.

Right of way conveyance shall be along the entire east right of way and 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. Thoroughfare Plan Road right-of-way conveyances shall be consistent with Palm Beach County's Thoroughfare Right of Way Identification Map and shall include where appropriate provisions for Expanded Intersection Details and "Corner Clips."

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. (DATE/BLDG. PERMIT: MONITORING-Eng) Previous Condition E2 of Zoning Resolution R2006-2554

3. The Property owner shall construct the north-south access road along the projects east property line from the present paved terminus south of Jog Road, south to the projects south entrance road. This road shall be to collector street standards, 2-12 foot travel lanes.

a. This construction shall be concurrent with the paving and drainage improvements for the site. Any and all costs associated with the construction shall be paid by the property owner. These costs shall include, but are not limited to, utility relocations and acquisition of any additional required right-of-way.

b. Permits required by Palm Beach County for this construction shall be obtained prior to the issuance of the first Building Permit. (BLDG PERMIT: Monitoring-Eng)

c. Construction shall be completed prior to the issuance of the first Certificate of Occupancy. (CO: MONITORING-Eng) (Previous Condition E3 of Zoning Resolution R2006-2554)

4. The Property owner shall construct a restricted median opening (left turn in only) at the north-south access road and Jog Road.

a. This construction shall be concurrent with the paving and drainage improvements for the site. Any and all costs associated with the construction shall be paid by the property owner. These costs shall include, but are not limited to, utility relocations and acquisition of any additional required right-of-way.

b. Permits required by Palm Beach County for this construction shall be obtained prior to the issuance of the first Building Permit. (BLDG PERMIT: Monitoring-Eng)

c. Construction shall be completed prior to the issuance of the first Certificate of Occupancy. (CO: MONITORING-Eng)

ENVIRONMENTAL

1. A Preserve Management Plan and form of recordation such as Conservation Easement, Restrictive Covenant or Plat, shall be approved by ERM and recorded by the applicant prior to final site plan approval. (DRO:ERM-ERM) (Previous ERM Condition No. 1 of Resolution No. R-2006-2554, Control No. 2005-480)
2. An upland preserve set-aside equal to or greater than 1.98 acres of the native upland vegetation shall remain as depicted on the site plan. (DRO: ERM-ERM) (Previous ERM Condition No. 2 of Resolution No. R-2006-2554, Control No. 2005-480)
3. A preserve management plan shall be approved by ERM prior to DRC site plan approval. The preserve management plan must include all preserve areas within the development. A Conservation Easement, or other instrument approved by ERM shall be required for all preserve areas prior to approval of the Preserve Management Plan. (DRO: ERM-ERM) (Previous ERM Condition No. 3 of Resolution No. R-2006-2554, Control No. 2005-480)
4. The applicant shall meet with Wellfield staff to discuss site development prior to final site plan approval. The site plan shall be in compliance with Article 14.B. (DRO:ERM-ERM) (Previous ERM Condition No. 4 of Resolution No. R-2006-2554, Control No. 2005-480)

HEALTH

1. The property owners and operators of facilities generating industrial, hazardous, or toxic wastes shall not deposit or cause to be deposited any such wastes 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) (Previous condition Health. 1. or Resolution R-2006-2554, Control No. 2005-460)

LANDSCAPE – STANDARD

1. Landscape Standard Condition 1. of Resolution R-2006-2554, Control No. 2005-460) which currently states:

Prior to the issuance of a building permit, the property owner shall submit a Landscape Plan and/or an Alternative 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)

Is hereby amended to read:

Prior to final approval by the Development Review Officer (DRO), the property owner shall submit a Landscape Plan and/or an Alternative Landscape Plan to the Landscape Section for review and approval. The Plans shall be prepared in compliance with all landscape related conditions of approval as contained herein. (DRO: LANDSCAPE - Zoning)

2. A minimum of sixty-five (65) percent of all canopy trees required 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: 3.5 inches measured at 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 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) (Previous Landscape Standard Condition 2. of Resolution R-2006-2554, Control No. 2005-460)
3. All palms required to be planted on the property by this approval shall meet the following minimum standards at installation, unless otherwise indicate herein:
 - 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) (Previous Landscape Standard Condition 3. of Resolution R-2006-2554, Control No. 2005-460)
 4. A group of three (3) or more palm trees may not supersede the requirement for a canopy tree in that location, unless specified herein. (BLDG PERMIT: LANDSCAPE - Zoning) (Previous Landscape Standard Condition 4. of Resolution R-2006-2554, Control No. 2005-460)
 5. Field adjustment of wall and plant material location may be permitted to provide pedestrian sidewalks and bike paths, and to accommodate transverse utility or drainage easements crossings and existing vegetation. (BLDG PERMIT: LANDSCAPE - Zoning) (Previous Landscape Condition 5. of Resolution R-2006-2554, Control No. 2005-460)
 6. Preservation areas along the west 495 feet of the south property line and the south 80 feet of the west property line may be excluded from perimeter landscape buffer planting and berm requirements, subject to the following:
 - a. prior to final approval by the Development Review Officer (DRO), documentation that demonstrates native preserve area vegetation will meet or exceed the screening provided by required perimeter landscaping shall be submitted to the Landscape Section for review and approval; and,
 - b. additional native vegetation may be relocated or added to preserve areas to meet the intent of this condition. (DRO: LANDSCAPE - Zoning) (Previous Landscape Condition 6. of Resolution R-2006-2554, Control No. 2005-460)

LANDSCAPING ALONG THE NORTH, EAST AND WEST PROPERTY LINE

7. In addition to the proposed landscaping and code requirements, landscaping and or buffer width on the north, east and west property lines 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. one (1) palm or pine 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) (Previous Perimeter Landscape Condition 1. of Resolution R-2006-2554, Control No. 2005-460)

LANDSCAPING ALONG THE NORTH, AND WEST PROPERTY LINE (ADJACENT TO RESIDENTIAL)

8. In addition to the proposed landscaping and code requirements, landscaping and/or buffer adjacent to the north and west property line shall be upgraded to include:

- a. a six (6) foot opaque concrete panel wall along the north and west property line. Both the interior and exterior sides of the wall shall be given a finished architectural treatment that is consistent with the color and style of the principal structure. 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.
- b. Hedges on the exterior side of the wall where adjacent to residential uses shall be maintained at a height equal to the height of the wall.
- c. The requirement for a wall may be waived, relocated or replaced with opaque screening subject to a variance approval adjacent to the retention area and tree preserve area only. (BLDG PERMIT: LANDSCAPE - Zoning) (Previous Perimeter Landscape Condition 1. of Resolution R-2006-2554, Control No. 2005-460) [STATUS: Variance 2006-01905 approved for 8.c. to replace wall with opaque screening]

9. LANDSCAPING ALONG THE SOUTH PROPERTY LINE (ABUTTING RESIDENTIAL)

Landscaping along the south property line may be reduced to a Type I compatibility buffer when the adjacent property is rezoned and a final site plan is approved to a compatible district and use. (BLDG PERMIT: LANDSCAPE - Zoning)

LIGHTING

1. Lighting Condition 1. of Resolution R-2006-2554, Control No. 2005-460 which currently states:

All outdoor, freestanding lighting fixtures shall not exceed twenty (20) feet in height measured from finished grade to highest point. (ONGOING: CODE ENF - Zoning)

Is hereby amended to read:

All outdoor, freestanding lighting fixtures north of the proposed building shall not exceed twenty (20) feet in height measured from finished grade to highest point. (ONGOING: CODE ENF - Zoning)

2. All outdoor, freestanding lighting fixtures be setback a minimum distance of five hundred (500) feet from the west property line. (ONGOING: CODE ENF - Zoning) (Previous Lighting Condition 1. of Resolution R-2006-2554, Control No. 2005-460)
3. All outdoor lighting shall be extinguished no later than one half (1/2) hour after operating hours, excluding security lighting only. (ONGOING: CODE ENF - Zoning) (Previous Lighting Condition 3. of Resolution R-2006-2554, Control No. 2005-460)
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) (Previous Lighting Condition 4. of Resolution R-2006-2554, Control No. 2005-460)

PARKING

1. Overnight storage or parking of delivery vehicles or trucks shall not be permitted on the property, except within designated loading and delivery areas. (ONGOING: CODE ENF - Zoning) (Previous Parking Condition 1. of Resolution R-2006-2554, Control No. 2005-460)

SIGNS

1. Freestanding signs fronting on Jog Road Extension shall be limited as follows:
 - a. maximum sign height, measured from finished grade to highest point - six (6) feet;
 - b. maximum sign face area per side - sixty (60) square feet;
 - c. maximum number of signs - one (1);
 - d. style - monument style only;
 - e. location - within 100 feet of the entryway on Jog Road; and,(BLDG PERMIT: BLDG Zoning) (Previous Sign Condition 1. of Resolution R-2006-2554, Control No. 2005-460)

USE LIMITATIONS

1. Use Limitation Condition 1. of Resolution R-2006-2554, Control No. 2005-460 which currently states:

Hours of business operation, including deliveries and loading, shall be limited to 7:00 a.m. to 9:00 p.m. Monday through Saturday, and 8:00 a.m. to 6:00 p.m. Sunday. (ONGOING: CODE ENF - Zoning)

Is hereby deleted. [REASON: Reorientation of the buildings allow loading in the rear of the structure. New Use Limitation condition provided]
2. Use Limitation Condition 2. of Resolution R-2006-2554, Control No. 2005-460 which currently states:

The storage of rental trucks/trailers or outside vendors, including an accessory vehicle rental facility, shall not be permitted on the property. (ONGOING: CODE ENF - Zoning)

Is hereby deleted. [REASON: Revised plan provides a warehouse use, condition no longer applicable.]
3. Outdoor retail business activities shall not be allowed on the property, excluding deliveries only. (ONGOING: CODE ENF - Zoning) (Previous Use Limitation Condition 3. of Resolution R-2006-2554, Control No. 2005-460)
4. Repair or maintenance of vehicles shall not be permitted on the property, excluding emergency and/or incidental repairs. (ONGOING: CODE ENF - Zoning) (Previous Use Limitation Condition 4. of Resolution R-2006-2554, Control No. 2005-460)
5. Storage or placement of any material, refuse, equipment or debris shall not be permitted in the rear of the facility. (ONGOING: CODE ENF - Zoning) (Previous Use Limitation Condition 5. of Resolution R-2006-2554, Control No. 2005-460)
6. No outdoor speaker or public address systems shall be permitted on the property. (ONGOING: CODE ENF - Zoning) (Previous Use Limitation Condition 6. of Resolution R-2006-2554, Control No. 2005-460)
7. The warehouse use shall be limited to a maximum of twenty percent (20%) accessory office use. (ONGOING: Building - Zoning)
8. The north driveway shall be limited to access for standard car parking; the southern drive will access the truck court area where all loading and unloading will occur; and, all overhead doors shall be along the south façade of the building. (ONGOING: CODE ENF - Zoning)

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.
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 a Conditional Use, Type II Variance, Development Order Amendment or other actions based on a Zoning Commission decision shall be by petition for writ of certiorari to the Circuit Court, Appellate Division, 15th Judicial Circuit of Florida. (ONGOING: MONITORING - Zoning)

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