

RESOLUTION NO. R-2009-0900

RESOLUTION APPROVING ZONING APPLICATION DOA-2008-00792
(CONTROL NUMBER 1981-00157)
DEVELOPMENT ORDER AMENDMENT
APPLICATION OF 1951 1997 South Military Trail, LLC
BY Siemon & Larsen, P.A., AGENT
(Target Shopping Center - 10 Cent Bingo)

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-2008-00792 was presented to the Board of County Commissioners at a public hearing conducted on May 28, 2009; 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 Plan, including standards for building and structural intensities and densities, and intensities of use; This Development Order Amendment is consistent with the purposes, goals, objectives and policies of the Plan, including standards for building and structural intensities and densities, and intensities of use;
2. This Development Order Amendment complies with applicable standards and provisions of the ULDC for use, layout, function, and general development characteristics, including appropriate portions of Article 4.B, Supplementary Use Standards;
3. This Development Order Amendment, with conditions as adopted, is compatible and generally consistent with the uses and character of the land surrounding and in the vicinity of the land proposed for development;
4. This Development Order Amendment with conditions as adopted, minimizes adverse effects, including visual impact and intensity of the property use on adjacent lands;
5. 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;
6. This Development Order Amendment, with conditions as adopted, will result in logical, timely and orderly development patterns;

7. This Development Order Amendment is consistent with applicable neighborhood plans in accordance with BCC policy;
8. This Development Order Amendment has a concurrency determination and complies with Article 2.F, Concurrency of the ULDC; and
9. This Development Order Amendment has demonstrated changed conditions or circumstances that necessitate a modification.

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-2008-00792, the application of 1951 1997 South Military Trail, LLC, by Siemon & Larsen, P.A., agent, for a Development Order Amendment to To modify and delete conditions of approval (Use Limitations and Engineering) 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 May 28, 2009, 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 Vana and, upon being put to a vote, the vote was as follows:

Commissioner John F. Koons, Chairman	-	Aye
Commissioner Burt Aaronson, Vice Chairman	-	Aye
Commissioner Karen T. Marcus	-	Aye
Commissioner Shelley Vana	-	Aye
Commissioner Steven L. Abrams	-	Aye
Commissioner Jess R. Santamaria	-	Aye
District 7	-	

The Chairperson thereupon declared that the resolution was duly passed and adopted on May 28, 2009.

Filed with the Clerk of the Board of County Commissioners on June 16th, 2009.

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 North 247.5 feet of the South $\frac{3}{4}$ of Lot 4, Block 3, Section 12, Township 44 South, Range 42 East, PALM BEACH PLANTATIONS, according to the plat thereof, recorded in Plat Book 10, Page 20 of the Public Records of Palm Beach County, Florida, excepting therefrom the following described parcel of land: That part of the North 247.5 feet of the South $\frac{3}{4}$ of Lot 4, Block 3, according to the Plat of Palm Beach Plantations, Plat 1, Sheet 1, as recorded in Plat Book 10, Page 20 in the Public Records of Palm Beach County, Florida, in Section 12, Township 44 South, Range 42 East, said part lying within 53 feet of the Baseline of Survey according to the Right of Way Map of Section 93590-2603, State Road 809, as filed in Map Book 3, Pages 72 to 76, in the Office of the Clerk of the Circuit Court, Palm Beach County, Florida, a part of said Baseline being more particularly described as follows:

Beginning at the Southeast corner of the Southwest $\frac{1}{4}$ of Section 13, Township 44 South, Range 42 East, run North 02 degrees 05'54" East, a distance of 4786.09 feet to the beginning of a curve to the left; thence Northerly along said curve having a central angle of 03 degrees 11'30" and radius of 21,485.94 feet, a distance of 1196.87 feet to the end of said curve; thence North 01 degrees 05'36" West, a distance of 2068.97 feet to the Northeast corner of the Southwest $\frac{1}{4}$ of Section 12, Township 44 South, Range 42 East.

PARCEL 2:

The South 252.75 feet of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 12, Township 44 South, Range 42 East, which is also described as the South 252.75 of Lot 4, Block 3, Section 12, Township 44 South, Range 42 East, PALM BEACH PLANTATIONS, according to the Plat thereof, recorded in Plat Book 10, Page 20, LESS the South 40 feet thereof, and LESS the Right of Way for State Road 809, including parcels described in the Minutes Circuit Court Book 56, Pages 111 and Official Records Book 1133, Page 410 of the Public Records of Palm Beach County, Florida.

PARCEL 3:

A portion of Parcel "A", BOUNDARY PLAT, as recorded in Plat Book 28, Pages 227 and 228 of the Public Records of Palm Beach County, Florida being more particularly described as follows:

Commencing at the Southeast corner of said Parcel "A"; thence South 89 degrees 59'57" West, along the South line of said Parcel "A", a distance of 174.79 feet to the POINT OF BEGINNING of this description; thence continue South 89 degrees 57'57" West, along the East described course, a distance of 652.04 feet; Thence North, a distance of 97.08 feet; Thence East, a distance of 647.45 feet; thence South 02 degrees 42'30" East, a distance of 97.18 feet to the POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM that parcel conveyed to the County of Palm Beach by Right of Way Deed recorded in Official Records Book 3690, Page 975 of the Public Records of Palm Beach County, Florida.

AND FURTHER LESS AND EXCEPTING that parcel conveyed to Olympia & York – Palm Springs Corp., by Warranty Deed recorded in Official Records Book 3741, Page 1 of the Public Records of Palm Beach County, Florida.

PARCEL 4:

A parcel of land lying in Lot 4, Block 3, Palm Beach Plantations, Model Land Company Subdivision in Section 12, Township 44 South, Range 42 East, recorded in Plat Book 10, Page 20, Public Records of Palm Beach County, Florida, being more particularly described as follows:

Commencing at the Southeast corner of Parcel "A" Boundary Plat, recorded in Plat Book 28, Pages 227 and 228, Public Records of Palm Beach County, Florida, said point lying on the West Right of Way line of Military Trail (S.R. 809) as now laid out and in use; thence South 89° 59' 57" West (for convenience the bearings shown herein are relative to an assumed meridian), along the South line of said Parcel "A", a distance of 7.01 feet to the Point of Beginning of this description, said point lying on a curve concave to the West having a radius of 21,425.94 feet and a central angle of 01° 13' 49"; the tangent to said curve bears South 02° 27' 12" East at this point; thence Southerly along the arc of said curve, a distance of 460.08 feet to the North Right of Way line of Lake Worth Drainage District Canal No. 8; thence South 89° 59' 56" West, along said North line, making an angle

measured North to West with the tangent of the last described curve of $88^{\circ} 46' 41''$, a distance of 845.57 feet; thence leaving said North line, North $00^{\circ} 00' 04''$ West, a distance of 138.50 feet to the beginning of a curve concave to the Southwest, having a radius of 78.46 feet and a central angle of $32^{\circ} 20' 40''$; thence Northerly and Northwesterly along the arc of said curve, a distance of 44.29 feet to a point of reverse curvature; thence Northwesterly and Northerly along the arc of a curve concave to the Northeast, having a radius of 108.46 feet and a central angle of $32^{\circ} 20' 40''$, a distance of 61.22 feet; thence North $00^{\circ} 00' 04''$ West along the tangent of said curve, a distance of 12.50 feet; thence North $89^{\circ} 59' 56''$ East, a distance of 654.32 feet; thence North $00^{\circ} 00' 04''$ West, a distance of 208.84 feet; thence North $89^{\circ} 59' 56''$ East, a distance of 205.50 feet to the Point of Beginning.

EXHIBIT B
VICINITY SKETCH

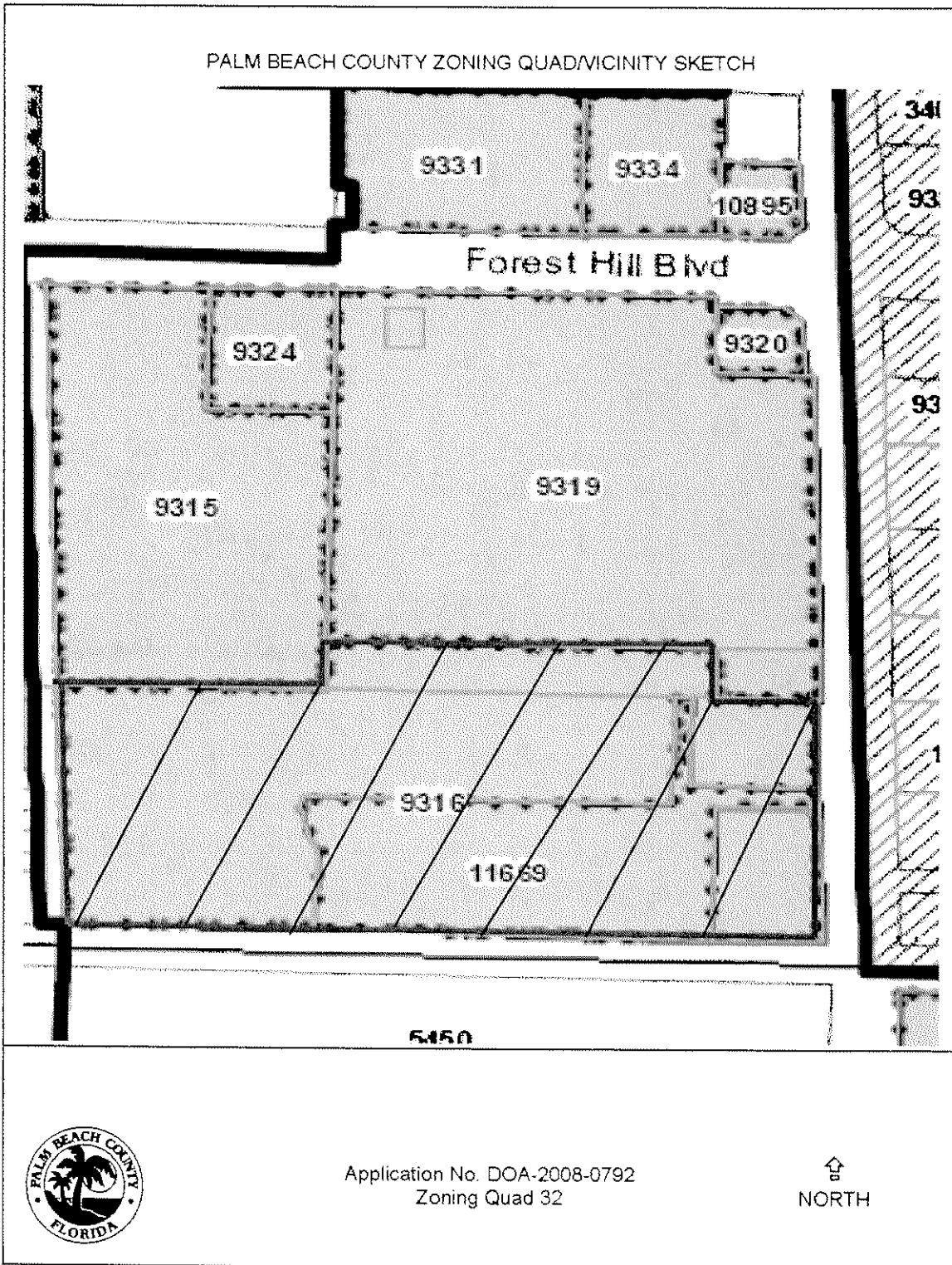


EXHIBIT C

CONDITIONS OF APPROVAL

ALL PETITIONS

1. Condition All Petitions 1 of Resolution R-2006-1546, Control No. 1981-157, which currently states:

All previous conditions of approval applicable to the subject property, as contained in Resolution R-2001-1669 (Petition DOA81-157(C)), 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, 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-2006-1546, Control No. 1981-157, 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, unless expressly modified. (ONGOING: MONITORING-Zoning)

2. Condition All Petitions 2 of Resolution R-2006-1546, Control No. 1981-157, 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 June 19, 2006. 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)

Is hereby amended to read:

Development of the site is limited to the uses 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 unless the proposed changes are required to meet conditions of approval or are in accordance with the ULDC. (ONGOING: ZONING-Zoning)

ARCHITECTURAL REVIEW-(PARCELS 1 AND 5)

1. All future development of this project shall comply with Article 5.C of the Palm Beach County Unified Land Development Code. (ONGOING: ARCH REVIEW-Zoning) (Previous Architectural Review 1 of Resolution R-2006-1546, Control No. 1981-157)

BUILDING AND SITE DESIGN

1. Loading areas shall be enclosed with a ten (10) foot wing wall to screen areas from residential property to the west. (ONGOING: DRO: ZONING) (Previous Building and Site Design 2 of Resolution R-2006-1546, Control No. 1981-157)

2. Prior to final approval by the Development Review Officer (DRO), the property owner shall revise the site plan to reflect all data as required by the Technical Requirements Manual, update the plan to reflect current site improvements and provide a master sign plan. (DRO: ZONING - Zoning) (Previous Building and Site Design 7 of Resolution R-2006-1546, Control No. 1981-157)

ENGINEERING

1. Within ninety (90) days of Special Exception approval, petitioner shall convey to Palm Beach County sixty (60) feet from centerline for the ultimate right-of-way for Military Trail. (ENG) (Previous Condition E1 of Resolution R-2006-1546, Control 1981-157)
[Note: Complete]

2.Landscape within Median of Military Trail

a. Prior to issuance of any building permits or interior modifications, 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 Military Trail. 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 and shall be consistent with the landscaping theme adopted for this roadway. 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. (BLDG PERMIT: MONITORING - Eng)

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. (CO: MONITORING - Eng)

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. (CO: MONITORING - Eng) (Previous Condition E2 of Resolution R-2006-1546, Control 1981-157)

[Note:Complete]

3.Petitioner shall construct at the project's entrance road and Military Trail:

a. Left turn lane, south approach

b. Right turn lane, north approach (ENG) (Previous Condition E3 of Resolution R-2006-1546, Control 1981-157)

[Note: Complete]

4.Petitioner shall construct at the project's entrance road and Forest Hill Boulevard prior to the issuance of a Certificate of Occupancy:

a. Left turn lane, east approach

b. Right turn lane, west approach (ENG) (Previous Condition E4 of Resolution R-2006-1546, Control 1981-157)

[Note: Complete]

5.Petitioner shall contribute One Hundred Fifty Thousand Dollars (\$150,000.00) within 120 days of Special Exception approval toward the construction program for Forest Hill Blvd. as a four lane median divided section from Congress Avenue on the east to Military Trails on the west as provided for in the 1981-1982 proposed capital outlay program. In the event this roadway improvement is not part of the 1981-1982 capital outlay program the approval of this petition shall be readdressed by the Board of County Commissioners. The terms of this condition to be specifically set forth in a road construction agreement approved by the County Attorney's office. (ENG)

(Previous Condition E5 of Resolution R-2006-1546, Control 1981-157)

[Note: Complete]

6.Previous Condition E.10 of Resolution R-2006-1546, Control No. 1981-0157, which currently states:

In order to comply with the mandatory Traffic Performance Standards, theDeveloper shall be restricted to the following:

a. Maximum occupancy of the Bingo Hall shall be limited to 400 persons.

b. Weekday hours of operation shall be from:

12:00 noon - 3:00 pm (afternoon matinee)
7:00 pm to 10:00 pm (evening game)
11:00 pm to 1:00 am (ONGOING: CODE ENF-Eng)
c. Weekend hours of operation shall be from:
7:00 pm to 10:00 pm (evening game)
11:00 pm to 1:00 am. (ONGOING: CODE ENF- Eng)

Is hereby amended to read:

In order to comply with the mandatory Traffic Performance Standards, the Developer shall be restricted to the following:

a. Maximum occupancy of the Bingo Hall shall be limited to 200 persons. (ONGOING:CODE ENFORCEMENT - Eng)

HEALTH

1. Previous condition Health 1. of Resolution R-2006-1546, Control 1981-157 which reads:

The developer will 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;HEALTH-Health)(COMPLETED)

2. The developer will take necessary precautions to insure there will be no pollutant runoff from this project to adjacent or nearby surface waters. (ONGOING: HEALTH-Health) (Previous condition Health 2. of Resolution R-2006-1546; Control 1981-157)

3. Previous condition Health 3. of Resolution R-2006-1546, Control 1981-157 which reads:

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 the sewage works are constructed and used by project tenants and owners generating such effluents. (ONGOING:HEALTH-Health)

Is hereby amended to read:

Owners and operators of facilities that generate 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 (FDEP), the Palm Beach County Health Department and the agency responsible for sewage works are used. (ONGOING:HEALTH-Health)

4. The owner, occupant or tenant of the facility shall participate in an oil recycling program which ensures proper re-use or disposal of waste oil. (ONGOING:HEALTH-Health) (Previous condition Health 6. of Resolution R-2006-1546, Control 1981-157)

ZONING - LANDSCAPING

1. Petitioner shall be required to construct a six (6) foot wall along the western property boundary prior to the issuance of a Certificate of Occupancy. BLDG PERMIT: LANDSCAPE - Zoning) (Previous Landscape Condition 1 of Resolution R-2006-1546, Control No. 1981-157) [NOTE: COMPLETED].

2. Prior to the issuance of a Building Permit, the petitioner shall plant foundation landscape area trees and any other trees depicted on the site plan but not planted on site. (BLDG PERMIT: LANDSCAPE - Zoning) (Previous Landscape Condition 2 of Resolution R-2006-1546, Control No. 1981-157) [NOTE: COMPLETED].

LAKE WORTH DRAINAGE DISTRICT

1. If the previously agreed upon Encroachment Agreement is not executed by the

property owner then, prior to final site plan approval by the DRO officer, the survey shall be amended to exclude the north 0.26 feet of the south 40.26 feet of the SE Quarter of the SW Quarter of Section 12/44/42 from the subject property per Chancery Case 407, as recorded in ORB 6495, PG 761. (DRO: ENG - LWDD)

PLANNING

1. Prior to final site plan approval by the Development Review Committee, the site plan shall be amended to include the future location of sidewalks along Military Trail since this site is within two (2) miles of a school. (DRO: ENG-Planning) (Previous Planning Condition G.1 of Resolution R-2001-1669, Control No. 1981-157) [NOTE: COMPLETE]

SIGNS

1. Replacement or relocation of the freestanding sign fronting on Military Trail 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;
- e. sign shall be limited to identification of tenant only. (BLDG PERMIT: BLDG - Zoning) (Previous Sign 1 of Resolution R-2006-1546, Control No. 1981-157)

2. Individual lettering size for all new wall mounted signs shall be limited to twenty-four (24) inches high. Wall signs shall be limited to identification of tenant only. (BLDG PERMIT: BLDG - Zoning) (Previous Sign 2 of Resolution R-2006-1546, Control No. 1981-157)

USE LIMITATIONS

1. Previous Use Limitations 1 of Resolution R-2006-1546, Control No. 1981-157 which currently states:

The hours of operation for the Bingo Hall shall be as follows:

- a. 7:00 p.m. to 10:00 p.m. (Mon. thru Sun.)
- b. 11:00 p.m. to 1:00 a.m. (Mon. thru Sun.)
- c. Noon to 3:00 p.m. (Mon. thru Fri.) (ONGOING: CODE ENF- Zoning)

Is hereby deleted - [REASON: The use is not adjacent to residential therefore the restriction of hours of operation are not applicable.]

2. Previous Use Limitation Condition No. 2 of Resolution R-2006-1546, Control No. 1981-157, which currently states:

The Bingo Hall shall be limited to a maximum of 400 seats. (ONGOING: CODE ENF- Zoning)

Is hereby amended to read:

The Bingo Hall shall be limited to a maximum of 200 seats. (ONGOING: CODE ENF- Zoning)

3. The church shall be limited to a maximum of 400 seats and 15,000 square feet. All services shall be held within the church. (ONGOING: CODE ENF- Zoning) (Previous Use Limitation Condition No. 3 of Resolution R-2006-1546, Control No. 1981-157).

4. Accessory outdoor uses such as temporary sales events shall be limited to a maximum of four (4) events per year, subject to a special permit, and shall be setback a minimum of 100 feet from all perimeter property lines. No temporary amusements or special events are permitted on the site. (ONGOING: CODE ENF- Zoning) (Previous Use Limitation Condition No. 4 of Resolution R-2006-1546, Control No. 1981-157).

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)

1. 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

a. The revocation of the Official Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or any other zoning approval; and/or

b. 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

c. Referral to code enforcement; and/or

d. 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. (ONGOING: MONITORING - Zoning)