

RESOLUTION NO. R-2009- 1359

RESOLUTION APPROVING ZONING APPLICATION DOA/CA-2009-00981  
(CONTROL NO. 1992-00039)  
CLASS A CONDITIONAL USE  
APPLICATION OF NGUYEN INVESTMENTS LLC  
BY JON E SCHMIDT & ASSOCIATES, AGENT  
(THE FOOD COURT)

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

WHEREAS, the Board of County Commissioners, pursuant to Article 2 (Development Review Process) of the Palm Beach County Unified Land Development Code (Ordinance 2003-067, as amended) is authorized and empowered to consider, approve, approve with conditions or deny Class A Conditional Uses; 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 DOA/CA-2009-00981 was presented to the Board of County Commissioners at a public hearing conducted on August 27, 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 recommendations of the Zoning Commission; and

WHEREAS, this approval is subject to Article 2.E (Monitoring) of the Palm Beach County Unified Land Development Code (ULDC) 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 Class A Conditional Use 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 Class A Conditional Use complies with relevant and appropriate portions of Article 4.B (Supplementary Use Standards) of the Palm Beach County Unified Land Development Code. This Class A Conditional Use also meets applicable local land development regulations. This Class A Conditional Use, 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.
3. This Class A Conditional Use, 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 Class A Conditional Use, 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 Class A Conditional Use, with conditions as adopted, will result in logical, timely and orderly development patterns.
7. This Class A Conditional Use, with conditions as adopted, is consistent with applicable Neighborhood Plans.
8. This Class A Conditional Use has a concurrency determination and complies with Article 2.F (Concurrency - Adequate Public Facility Standards) of the ULDC.
9. The applicant has demonstrated sufficient justification that there are changed circumstances, which would require the Class A Conditional Use.

WHEREAS, Article 2.A.1.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/CA-2009-00981, the application of Nguyen Investments LLC, by Jon E Schmidt & Associates, agent, for a Class A Conditional Use to allow a Type I Restaurant in the CG District, 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 as indicated in EXHIBIT B, attached hereto and made a part hereof, was approved on August 27, 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 Burt Aaronson 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	—	
Commissioner Steven L. Abrams	—	Aye
Commissioner Jess R. Santamaria	—	Aye
Commissioner Priscilla A. Taylor	—	Aye

The Chairperson thereupon declared that the resolution was duly passed and adopted on August 27, 2009.

Filed with the Clerk of the Board of County Commissioners on September 10, 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 R. BOCK,  
CLERK & COMPTROLLER

BY:   
COUNTY ATTORNEY

BY:   
DEPUTY CLERK

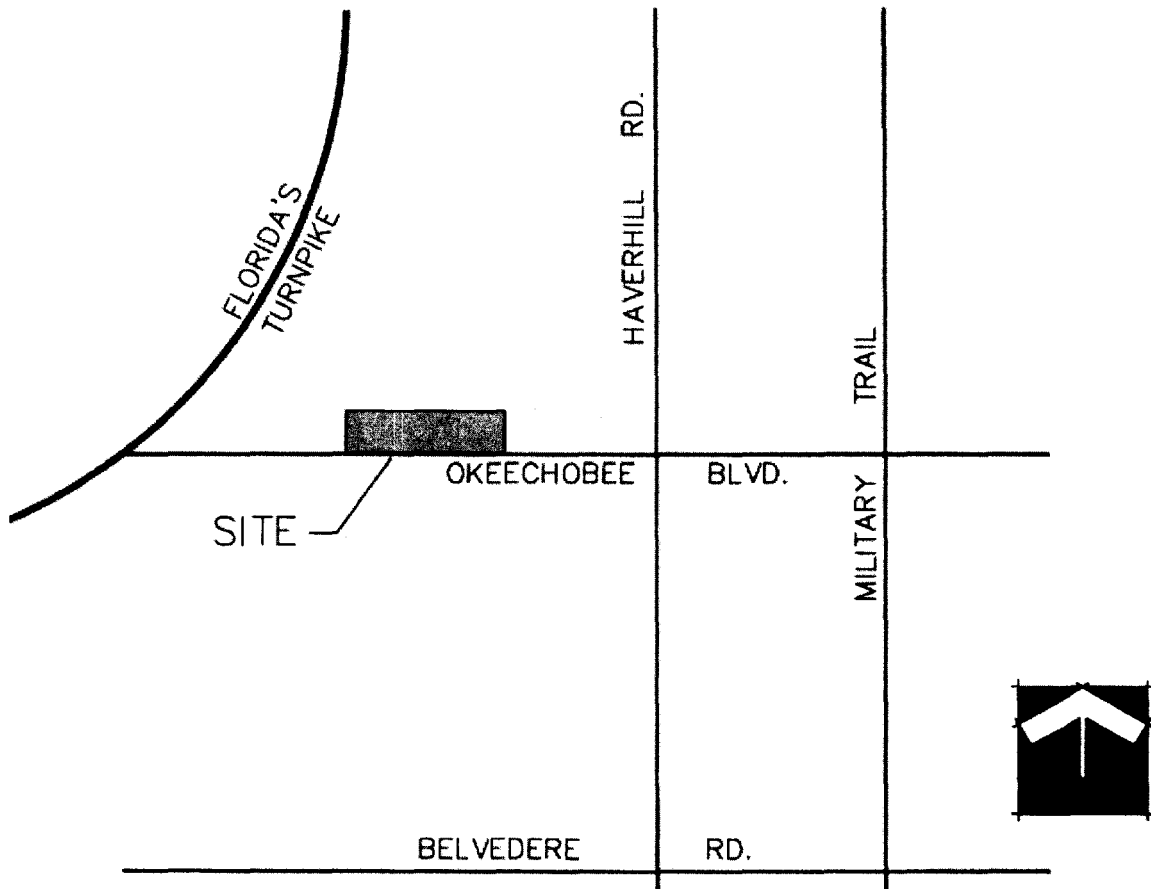


EXHIBIT A

LEGAL DESCRIPTION

PARCEL B, GLADSTONE COMMERCIAL CENTER ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 82, PAGE 81, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA,

EXHIBIT B  
VICINITY SKETCH



## EXHIBIT C

### CONDITIONS OF APPROVAL

#### ALL PETITIONS-PARCEL B

1.The approved site plan is dated June 15, 2009. Modifications to the development order inconsistent with the conditions of approval, or changes to the uses or site design beyond the authority of the DRO as established in the ULDC, must be approved by the Board of County Commissioners or the Zoning Commission. (ONGOING: ZONING - Zoning)

#### ARCHITECTURAL REVIEW-PARCEL B ONLY

1.At time of submittal for final Development Review Officer (DRO) approval, the architectural elevations for the restaurant shall be submitted simultaneously with the site plan for final architectural review and approval. Elevations shall be designed to be consistent with Article 5.C of the ULDC. Development shall be consistent with the approved architectural elevations, the DRO approved site plan, all applicable conditions of approval, and all ULDC requirements. (DRO: ARCH REVIEW - Zoning)

#### ENGINEERING-PARCEL B

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

a.No building permits for parcel B shall be issued after December 31, 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.E of the Unified Land Development Code. (DATE: MONITORING Eng)

5.Prior to issuance of the first building permit for Parcel B, the property owner shall record an agreement in the public records of Palm Beach County with the adjacent property owner of Parcel C, as shown on plat book 82, page 82, allowing proposed improvements for the driveway connection to be completed on Parcel C. (BLDG PERMIT:MONITORING-Eng)

6.Prior to Final Site Plan approval by the DRO for Parcel B, the site plan for Parcel B shall indicate that plantings within the "safe sight corners" at the driveway entrance to Parcel B shall comply with Palm Beach County height standards. (DRO: ENGINEERING-Eng)

#### ENGINEERING

7.Prior to issuance of the Certificate of Occupancy for Parcel B, the shared drive aisle between Parcel B and Parcel C shall be redesigned and reconstructed, as approved by the County Engineer. (CO:MONITORING-Eng)

#### LANDSCAPE - GENERAL-PARCEL B

1.A minimum of fifty (50) percent of all 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. (DRO BLDG PERMIT: LANDSCAPE - Zoning)

2.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)

3.A minimum of sixty percent (60%) 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)

4.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)

#### LANDSCAPE - GENERAL-PARCEL B

5.Field adjustment of 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)

#### LIGHTING-PARCEL B

1.The lighting conditions below shall not apply to proposed low voltage landscape/accent type lights used to emphasize plant material. (ONGOING: CODE ENF - Zoning)

2.All outdoor, freestanding lighting fixtures shall not exceed twenty-five (25) feet in height measured from finished grade to highest point. (BLDG PERMIT: BLDG - Zoning)

3.All outdoor, freestanding lighting fixtures be setback of three hundred (300) feet from any residential property line or use. (BLDG PERMIT: BLDG - Zoning)

#### SIGNS-PARCEL B

1.Freestanding signs fronting on the frontage road shall be limited as follows:

- a. maximum sign height, measured from finished grade to highest point - eight (8) feet;
- b. maximum sign face area per side - fifty (50) square feet;
- c. maximum number of signs - one (1);
- d. style - monument style only; and
- e. location - Parcel B frontage on the frontage road.  
(BLDG PERMIT: BLDG - Zoning)

#### COMPLIANCE-PARCEL B

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

#### COMPLIANCE-PARCEL B

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 (CO); 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 Unified Land Development Code (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 the 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 Section 2.E of the ULDC, in response to any flagrant violation and/or continued violation of any condition of approval. (ONGOING: MONITORING - Zoning)