

RESOLUTION NO. R-2016- 1833

RESOLUTION APPROVING ZONING APPLICATION ABN/DOA/R-2016-00438  
(CONTROL NO. 1984-00152)  
a Development Order Amendment  
APPLICATION OF Boca SVP LLC  
BY Nichols Page Design Associates, AGENT  
(Fuji Yama Restaurant)

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;

WHEREAS, the notice and public hearing requirements pursuant to Article 2 (Development Review Procedures) of the Palm Beach County Unified Land Development Code, Ordinance 2003-067 as amended (ULDC), have been satisfied;

WHEREAS, Zoning Application ABN/DOA/R-2016-00438 was presented to the Board of County Commissioners at a public hearing conducted on December 7, 2016;

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;

WHEREAS, the, Board of County Commissioners pursuant to Article 2 (Development Review Procedures) of the ULDC is authorized and empowered to consider, approve, approve with conditions or deny the request;

WHEREAS, THE Board of County Commissioners hereby incorporates by reference the Findings in the staff report addressing the Standards contained in Article 2.B (Public Hearing Process) for a Development Order Amendment;

WHEREAS, this approval is subject to Article 2.E (Monitoring) of the ULDC and other provisions requiring that development commence in a timely manner;

WHEREAS, the issuance of this Development Permit does not in any way create any rights on the part of the Applicant and/or Property Owner to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the Applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law;

WHEREAS, the Palm Beach County Survey Section may administratively correct any scrivener's errors that will not significantly impact the overall boundary of the adopted legal description; and,

WHEREAS, Article 2.A.1.K.3.b (Action by BCC) of the ULDC 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 ABN/DOA/R-2016-00438, the Application of Boca SVP LLC, by Nichols Page Design Associates, Agent, for a Development Order Amendment to reconfigure the master and site plans and add a Requested Use, on a parcel of land generally described as shown on the legal description 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 December 7, 2016, subject to the Conditions of Approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Berger moved for the approval of the Resolution.

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

|  |     |   |        |
|--|-----|---|--------|
| Commissioner Paulette Burdick, Mayor       | Aye | - | Aye    |
| Commissioner, Melissa McKinlay, Vice Mayor |     | - | Absent |
| Commissioner Hal R. Valeche                |     | - | Aye    |
| Commissioner Dave Kerner                   |     | - | Aye    |
| Commissioner Steven L. Abrams              |     | - | Aye    |
| Commissioner Mary Lou Berger               |     | - | Aye    |
| Commissioner Mack Bernard                  |     | - | Aye    |

The Mayor thereupon declared that the resolution was duly passed and adopted on December 7, 2016.

Filed with the Clerk of the Board of County Commissioners on December 19th, 2016.

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: [Signature]  
COUNTY ATTORNEY

BY: [Signature]  
DEPUTY CLERK  




## EXHIBIT A

### LEGAL DESCRIPTION

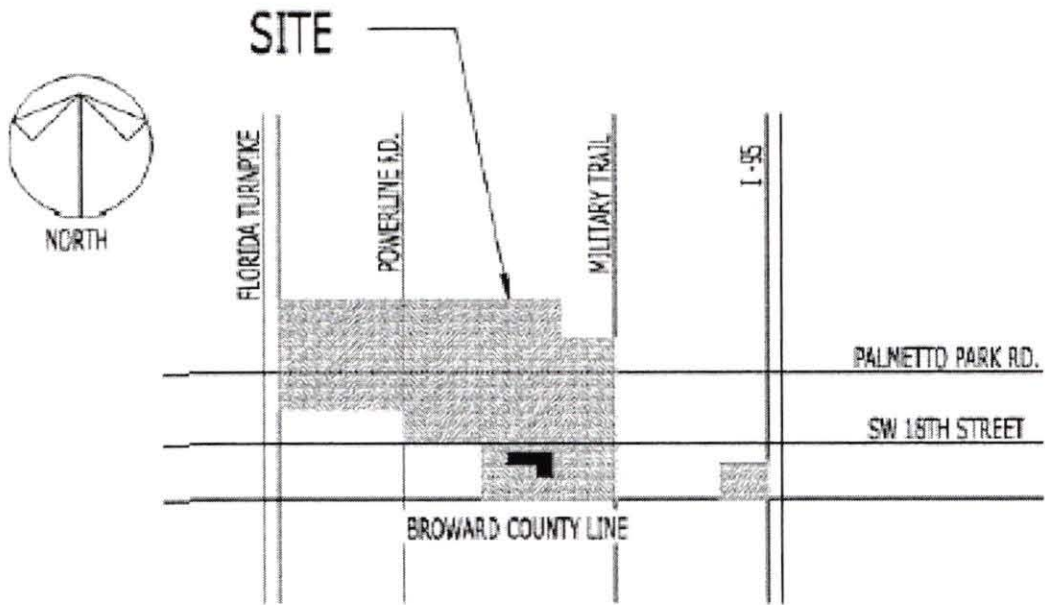
Tract 77 of Boca Del Mar.

A Parcel of land lying in the Northeast Quarter (N.E. 1/61 of Section 34 and the Northwest Quarter (N.W, 1/2) of Section 35, Township 45 South, Range 42 East, Palm Beach County, Florida, said land being more particularly described as follows :

Commencing at the Northwest corner of Section 35, thence with a bearing of 52°24'58"E, along the West line of Section 35, a distance of 1389.65 feet to the Point of Beginning; thence with a bearing of N 89°32'51"E a distance of 205.65 feet to a point, thence with a bearing of S 0°27'09" E, a distance of 823.94 feet to a point; thence with a curve to the left having a tangent bearing of N 47° 51 '56" W a radius of 2123.10 feet , an arc length of 282.76 feet to a point of compound curvature; thence with a curve to the left having a radius of 787.35 feet, an arc length of 577.33 feet to a point thence, with a bearing of N 0° 23'05"W, a distance of 311.51 feet to a point, thence with a bearing of N 09°36'55" E, a distance of 512.64 feet to a point, thence with a bearing of N 89° 32'51"E, a distance of 49.46 feet more or less to the Point of Beginning.

Containing 7.000 Acres more or less, and subject to easements and rights- of-way of record.

EXHIBIT B  
VICINITY SKETCH



## EXHIBIT C

### CONDITIONS OF APPROVAL

#### Development Order Amendment

##### ALL PETITIONS

1. Previous A Condition 1 of Resolution R-1995-1321-3, Control No.1984-00152, which currently states:

All previous conditions of approval applicable to the subject property, as contained in Resolutions R-85-288, R-91-1466, and R-1995-107 and R-95-1017 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, unless expressly modified.

Note Resolution R-87-1111 [Petition 84-152 (A) Resolution R-88-1539 [Petition 84-152 (B) and Resolution R [Petition 84-152 (E) are requests specific to other parcels not a subject of this petition conditions of approval contained in resolution R-87-1111 R-88-1539 and R-1995-115 therefor are not consolidated herein

##### Is hereby amended to read:

All previous Conditions of Approval applicable to the subject property, as contained in Resolutions R-1985-288, R-1991-1466, and R-1995-107, R-1995-1017 and R-1995-1321.3 (Control 1984-00152), 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 Unified Land Development Code and the Board of County Commissioners or Zoning Commission, unless expressly modified. (ONGOING: ZONING - Zoning)

2. The approved Preliminary Site Plan is dated August 29, 2016. Modifications to the Development Order inconsistent with the Conditions of Approval, or changes to the uses or site design beyond the authority of the Development Review Officer as established in the Unified Land Development Code, must be approved by the Board of County Commissioners or the Zoning Commission. (ONGOING: ZONING - Zoning)

3. Prior to final approval by the Development Review Officer (DRO), the Preliminary Site Plan shall be revised to correctly identify the number of parking on site, compliant with the previous Development Order. Modifications to the parking shall comply with Articles 6 and 7 for interior and terminal islands. (DRO: ZONING - Zoning)

##### ENGINEERING

1. Previous ENGINEERING Condition 1 of Resolution R-1995-1321-3, Control No.1984-00152, 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 the proposed day care center at the time of the Building Permit presently is \$6,545.00 (119 trips X \$55.00 per trip).

**Is hereby deleted.** [REASON: Code Requirement]

2. Previous ENGINEERING Condition 2 of Resolution R-1995-1321-3, Control No.1984-00152, 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 Number 84-152(G), to be paid at the time of the Building Permit presently is \$4,785. (87



additional trips X \$55.00 per trip).

**Is hereby deleted.** [REASON: Code Requirement]

### **HEALTH**

1. Sewer service is available to the property. Therefore, no septic tank shall be permitted on the site. (ONGOING: HEALTH DEPARTMENT - Health Department) [Note: COMPLETED] (Previous D Condition 1 of Resolution R-1995-1321-3, Control No.1984-00152)

2. Water service is available to the property. Therefore, no well shall be permitted on the site to provide potable water. (ONGOING: HEALTH DEPARTMENT - Health Department) [Note: COMPLETED] (Previous D Condition 2 of Resolution R-1995-1321-3, Control No.1984-00152)

3. Architectural plans must be submitted to the Environmental Health Section, Palm Beach County Public Health Unit in accordance with Chapter 1QD-2 4 FAC prior to issuance of a building permit. (BLDGPMT: HEALTH DEPARTMENT - Health Department) [Note: COMPLETED] (Previous D Condition 3 of Resolution R-1995-1321-3, Control No.1984-00152)

### **SITE DESIGN**

1. No dumpsters shall be located within 50 feet of the day care center outdoor play area. (ONGOING: ZONING - Zoning) (Previous C Condition 1 of Resolution R-1995-1321-3, Control No.1984-00152)

### **SOLID WASTE AUTHORITY**

1. The property owner(s)/lessees shall participate in a recycling program when available in the area. Material to be recycled shall include, but not be limited to, paper, plastic, metal and glass products. (ONGOING: ZONING - Zoning) (Previous G Condition 1 of Resolution R-1995-1321-3, Control No.1984-00152)

### **USE LIMITATIONS - DAY CARE**

1. Total gross floor area of the day care center shall be limited to a maximum of 6,099 square feet (ONGOING: ZONING - Zoning) (Previous B Condition 1 of Resolution R-1995-1321-3, Control No.1984-00152)

2. The day care center shall be limited to a maximum of 156 children. (ONGOING: ZONING - Zoning) (Previous B Condition 2 of Resolution R-1995-1321-3, Control No.1984-00152)

3. The petitioner shall provide a minimum of one twelve (12) foot tall native canopy tree per 750 square feet of outdoor play area provided. All trees required by this condition shall be planted within the interior of the outdoor play area. (Previous B Condition 3 of Resolution R-1995-1321-3, Control No.1984-00152)

4. Landscaping along the perimeter of the outdoor activity area shall be upgraded to include fourteen (14) foot tall native canopy trees placed twenty (20) feet on center (except adjacent to the east face of the building) and twenty-four (24) inch high hedge or shrub material placed twenty-four (24) inches on center. (Previous B Condition 4 of Resolution R-1995-1321-3, Control No.1984-00152)

5. The ten (10) drop-off stalls shall be a minimum of twelve (12) feet wide by twenty (20) feet in length. These stalls shall be marked with above-grade signage indicating "15-minute parking only" and shall be located at the day care center entrance of Resolution R-1995-1017. (Previous B Condition 5 of Resolution R-1995-1321-3, Control No.1984-00152)

6. No school buses or vehicles over 25 feet in length shall be permitted to pick up or deliver children to or from the day care center. (ONGOING: ZONING - Zoning) (Previous B Condition 6 of Resolution R-1995-1321-3, Control No.1984-00152)



7. Any mechanical equipment in the day care center area shall be screened from view on all sides to a height of six feet or the height of the equipment. (ONGOING: ZONING - Zoning) (Previous B Condition 7 of Resolution R-1995-1321-3, Control No.1984-00152)

8. Prior to site plan certification, the petitioner shall revise the landscape tabular data on the day care center site plan to reflect conformance to minimum Landscape Code requirements and all landscape/vegetation preservation conditions of approval. (ONGOING: ZONING - Zoning) (Previous B Condition 8 of Resolution R-1995-1321-3, Control No.1984-00152)

9. Hours of operation for the day care center shall commence no earlier than 7:00 a.m. (ONGOING: ZONING - Zoning) (Previous B Condition 9 of Resolution R-1995-1321-3, Control No.1984-00152)

10. No outdoor playground activity shall occur prior to 9:00 a.m. on weekdays or prior to 10:00 a.m. on weekends. (ONGOING: ZONING - Zoning) (Previous B Condition 10 of Resolution R-1995-1321-3, Control No.1984-00152)

11. The playground shall be sodded and landscaped with no hard surfaces except for an interior bike path. (ONGOING: ZONING - Zoning) (Previous B Condition 11 of Resolution R-1995-1321-3, Control No.1984-00152)

12. Prior to site plan certification the site plan shall be amended to indicate one (1) minimum 36 inch high bollard every five (5) feet on center around the perimeter of the outdoor play area. (ONGOING: ZONING - Zoning) (Previous B Condition 12 of Resolution R-1995-1321-3, Control No.1984-00152)

#### **UTILITIES**

1. Previous F Condition 1 of Resolution R-1995-1321-3, Control No.1984-00152, which currently states:

When irrigation quality water is available within 500 feet of the property, the petitioner shall connect to the system. The cost for connection shall be borne by the property owner.

**Is hereby deleted.** [REASON: Not in PBCWUD Service Area.]

#### **COMPLIANCE**

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: ZONING - 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; the 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 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 of Approval; 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: ZONING - Zoning)

**DISCLOSURE**

1. All applicable state or federal permits shall be obtained before commencement of the development authorized by this Development Permit.