

RESOLUTION NO. R-2017- 0504

RESOLUTION APPROVING ZONING APPLICATION SV/PDD/R/ABN-2016-00424  
(CONTROL NO. 1999-00029)  
an Official Zoning Map Amendment to a Planned Development District  
APPLICATION OF BDG Delray  
BY Wantman Group Inc., AGENT  
(Stop and Shop)

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 SV/PDD/R/ABN-2016-00424 was presented to the Board of County Commissioners at a public hearing conducted on April 27, 2017;

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 an Official Zoning Map Amendment to a Planned Development District;

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 SV/PDD/R/ABN-2016-00424, the Application of BDG Delray, by Wantman Group Inc., Agent, for an Official Zoning Map Amendment to allow a rezoning from the Agricultural Reserve (AGR) Zoning District to the Multiple Use Planned Development (MUPD) Zoning District, 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 April 27, 2017, subject to the Conditions of Approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Bernard moved for the approval of the Resolution.

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

Commissioner Paulette Burdick, Mayor	-	Aye
Commissioner Melissa McKinlay, Vice Mayor	-	Aye
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 April 27, 2017.

Filed with the Clerk of the Board of County Commissioners on May 11th, 2017.

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 I:

Beginning at the intersection of the Westerly right-of-way line of State Road No. 7, as recorded in State Road Plat Book 1, Pages 35 to 41, inclusive, with the Northerly line of Tract 1, Block 67, THE PALM BEACH FARMS CO. PLAT NO. 3, a subdivision in Palm Beach County, Florida, recorded in Plat Book 2, Pages 45 to 54, inclusive, Palm Beach County Records, for a point of beginning, thence running Southerly along the Westerly right-of-way line of State Road No. 7 for a distance of 420 feet; thence Westerly parallel to the North line of said Tract 1, a distance of 210 feet; thence Northerly parallel to the Westerly line of said right-of-way of said State Road No. 7, a distance of 420 feet; thence Easterly along the North line of Tract 1, in Block 67, a distance of 210 feet to the point of beginning.

Being a part of the premises described in Deed to Walter A. Mayton and Bettye H. Mayton, his wife from John D. Watson, et al. dated November 16, 1976, and recorded in Official Record Book 2606, at Page 1592 of the Public Records of Palm Beach County, Florida and now known as "Bulk Plant" U.S. 441 and West Atlantic Avenue, Delray Beach, Florida.

LESS AND EXCEPT the lands described in Order of Taking recorded in Official Record Book 10226, Page 121.

#### PARCEL II:

A parcel of land lying in Tract 1, Block 67, Palm Beach Farms Company Plat No. 3 according to the Plat as recorded in Plat Book 2, Pages 45 to 54, inclusive, Public Records of Palm Beach County, Florida, being more particularly described as follows:

Commencing at the intersection of the North line of Tract 1 with the West right-of-way line of State Road No. 7; thence run Westerly along the North line of Tract 1, a distance of 210 feet to the Point of Beginning; thence run Southerly on a line parallel to the West right-of-way line of State Road No. 7, a distance of 420 feet; thence run Westerly, parallel to the North line of Tract 1, a distance of 477.8 feet to a point on the West line of Tract 1; thence run Northerly along the West line of Tract 1, a distance of 420 feet to the Northwest corner of Tract 1; thence run Easterly along the North line of Tract 1, a distance of 477.8 feet to the Point of Beginning.

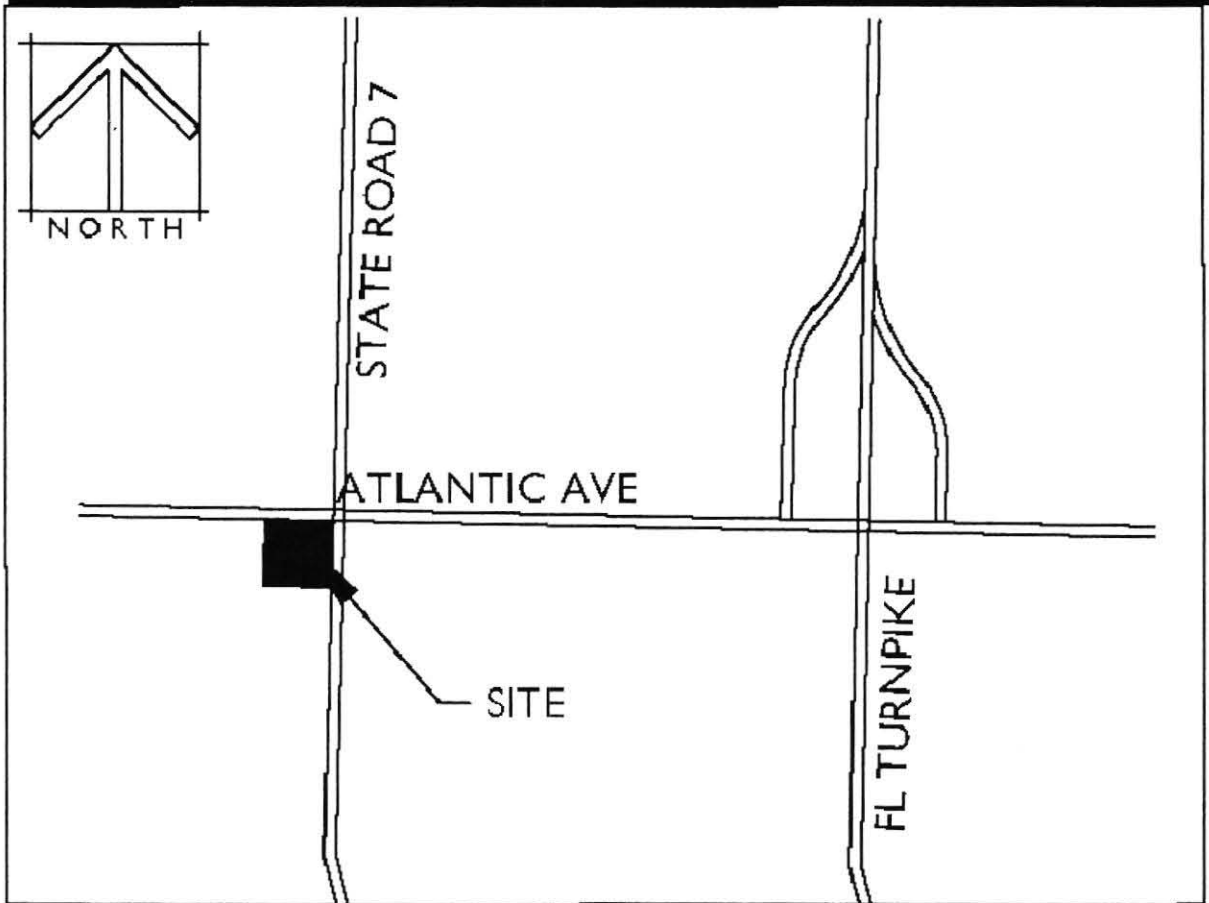
Being a part of the premises described in a Deed to Florida Coast Oil Company, a Florida corporation from Ann Weskow, a single woman, dated July 21, 1978, and recorded in Official Record Book 2928, Page 1870 of the Public Records of Palm Beach County, Florida, and now known as an unimproved parcel located next to "Bulk Plant", U.S. 441 and West Atlantic Avenue, Delray Beach, Florida.

Containing 2.0680± hectares (5.1103± acres), more or less.

EXHIBIT B  
VICINITY SKETCH

LOCATION MAP

NTS



## EXHIBIT C

### CONDITIONS OF APPROVAL

#### Non Residential Planned Development District

##### ALL PETITIONS

1. The approved Preliminary Site and Regulating Plans are dated January 23, 2017. 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. (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 for review and approval by the Zoning Division. Architectural Elevations shall comply with the standards indicated in Article 5.C of the Unified Land Development Code (ULDC). Development shall be consistent with the approved Architectural Elevations, the DRO approved Final Plan, all applicable Conditions of Approval, and all ULDC requirements. (DRO: ZONING - Zoning)

##### ENGINEERING

1. 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 12/31/2020. 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 Art. 2.E of the Unified Land Development Code. (DATE: MONITORING - Engineering)

2. Prior to the issuance of the first building permit, the Property Owner shall configure the property into a legal lot of record in accordance with provisions of Article 11 of the Unified Land Development Code. (BLDGPM: MONITORING - Engineering)

3. The Property Owner shall construct an east approach left turn lane on Atlantic Avenue at the project's entrance road. 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.

a. Permits required from Palm Beach County for this construction shall be obtained prior to the issuance of the first building permit. (BLDGPM: MONITORING - Engineering)

b. Construction shall be completed prior to the issuance of the first Certificate of Occupancy. (BLDGPM/CO: MONITORING - Engineering)

4. The Property Owner shall design, install and perpetually maintain median landscape within the median of all abutting right of way of State Road 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 County Engineer 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 c below.

a. The necessary permit(s) for this landscaping and irrigation shall be applied for from the Florida Department of Transportation prior to the issuance of the first building permit. (BLDGPM: MONITORING - Engineering)

b. All installation of the landscaping and irrigation shall be completed prior to the issuance of the first certificate of occupancy. (BLDGPM/CO: MONITORING - Engineering)

c. Alternately, at the option of the Property Owner or if the construction of the required landscape and irrigation is not possible due to physical constraints, the Property Owner may make a contribution to Palm Beach County's Only Trees Irrigation and Sod, OTIS

program, unincorporated thoroughfare beautification program prior to the issuance of the first Building Permit. This payment option is only available if the roadway segment is included in the County's current OTIS Master Plan and shall be based on the project's front footage along State Road 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. (BLDGPM: MONITORING - Engineering)

5. Prior to issuance of the first building permit, the Property Owner shall provide to Palm Beach County sufficient public road drainage easement(s) through the project's internal drainage system, as required by and approved by the County Engineer, to provide legal positive outfall for runoff from those segments of State Road 7 along the property frontage; and a maximum of an additional 800 feet of these adjacent roadway(s), unless FDOT deems this additional drainage to be unnecessary and the condition can be marked complete. The limits of this additional 800 feet of drainage shall be determined by the County Engineer. Said easements shall be no less than 20 feet in width. Portions of such system not included within roadways or waterways dedicated for drainage purposes will be specifically encumbered by said minimum 20 foot drainage easement from the point of origin, to the point of legal positive outfall. The drainage system within the project shall have sufficient water quality, water quantity and, when necessary, compensating storage capacity within this project's system as required by all permitting agencies, as well as conveyance capacity to meet the storm water discharge and treatment requirements of Palm Beach County, the applicable Drainage District, and the South Florida Water Management District, for the combined runoff from the project to accommodate the ultimate Thoroughfare Plan Road Section(s) of the included segment. Specifically, one through lane must be open during the 25-year, 3-day storm and the elevation for the 3-year, 1-day storm event shall provide sufficient freeboard to allow for efficient roadway drainage system design. If required and approved by the County Engineer, the Property Owner shall construct within the proposed drainage easements a minimum of 24 inch closed piping system and appropriate wingwall or other structures as required by and approved by the County Engineer. Elevation and location of the entire drainage system shall be approved by the County Engineer. Any and all excess fill material from excavation by Palm Beach County within said easements shall become the property of Palm Beach County which at its discretion may use this fill material. The Property Owner shall not record these required easements or related documents. After final acceptance of the location, legal sketches and dedication documents, Palm Beach County shall record all appropriate deeds and documents. (BLDGPM: MONITORING - Engineering)

6. Property Owner shall construct a minimum 5 foot wide concrete sidewalk within the right-of-way along the entire frontage of the north property line. 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. These improvements shall be completed concurrently with the onsite paving and grading and shall be completed prior to the issuance of the first certificate of occupancy. (BLDGPM/CO: MONITORING - Engineering)

7. No Building Permits shall be issued until the Property Owner makes a proportionate share payment of \$108,730.00 to add 1 WBL (making dual) and 1 SBL (making dual) lanes at the intersection of Atlantic Ave and Lyons Rd and to add a 3rd WBT lane at the intersection of Atlantic Ave and E Tpk intersection. Note that while this proportionate share payment is based on proportionate cost of a specific roadway improvement, the County, in its sole discretion may apply such payment to one or more mobility improvements to regionally significant transportation facilities. The proportionate share payment shall be adjusted at the time of payment by the escalator calculation set forth in Condition 8. Any road impact fees paid by the Developer on this project prior to this proportionate share payment will be applied as a credit toward the proportionate share payment. The proportionate share payment is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility in the area. (BLDGPM: MONITORING - Engineering)

8. In recognition that construction prices may change over the life of the project, the proportionate share payments shall be subject to the following escalator calculation:

Adjusted Payment (when payment is being made) = Original Payment Amount x Cost Adjustment Factor

Where,

Original Payment Amount = Proportionate Share Payment amount specified in the Proportionate Share Agreement

Cost Adjustment Factor = (Producer Price Index (PPI) for Commodities Code ID WPUIP2312301 (month of payment))/(Producer Price Index (PPI) for Commodities Code ID WPUIP2312301 (month of Prop Share Execution))

The Bureau of Labor Statistics Producer Price Index (PPI) for Commodities (Series ID: WPUIP2312301), can be found at <http://data.bls.gov/timeseries/WPUIP2312301>.

If at the time a Proportionate Share payment is due, the Commodities Code ID WPUIP2312301 is no longer used by the United States Bureau of Labor Statistics, the Adjusted Payment will be based on the Producer Price Index for non-residential commodities then in effect. In the event such an index is no longer in use, the Adjusted Payment will be based on the United States Bureau of Labor Statistics Consumer Price Index then in effect. (ONGOING: ENGINEERING - Engineering)

#### **LANDSCAPE - PERIMETER**

1. Special planting treatment shall be provided at the intersection of State Road 7 (US 441) and West Atlantic Avenue. Planting shall consist of the following:

- a. A minimum of three (3) specimen palm; (Bismarck, Canary, Royal, Phoenix, or other species that is acceptable to the Landscape Section)
- b. A minimum of five (5) flowering trees; and,
- c. Appropriate shrub or hedge materials and ground cover. (BLDGPM: ZONING - Zoning)

2. In addition to ULDC requirements, the Property Owner shall provide special planting treatment within the Right of Way buffer (ROW) along 441 and Atlantic Avenue to include:

- a. Four (4) Royal Palms or a similar species that is acceptable to the Landscape Section shall be planted adjacent to each ROW frontage. Royal Palms must meet FPL Right Tree Right Place location criteria. Palms shall have a minimum of six (6) foot of grey wood at installation.

- b. A specimen palm (ie. Canary island date palm, Sylvester palm, Bismarck palm, Royal Palm) shall be located in the outdoor pedestrian plaza. (BLDGPM: ZONING - Zoning)

#### **PLANNING**

1. Per LGA-2016-023, Ordinance No. 2016-049: Development on the site under the Commercial Low future land use designation is limited to a maximum of 40,000 square feet of commercial uses, or other uses which do not exceed the equivalent traffic generating trips.

(ONGOING: PLANNING - Planning)

#### **SITE DESIGN**

1. Prior to Final Approval by the Development Review Officer, the Site Plan shall be revised to update the Concurrency Box to be consistent with the names as listed in the Unified Land Development Code Use Matrix.

2. Prior to Final Approval by the Development Review Officer, the Site Plan shall be revised to update the square footage on the Concurrency Box to match the square footage of the proposed buildings. (DRO: ZONING - Zoning)

#### **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: MONITORING - Zoning) (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.