

RESOLUTION NO. R-2017- 0962

RESOLUTION APPROVING ZONING APPLICATION ZV/DOA/R-2016-01826
(CONTROL NO. 1985-00155)
a Development Order Amendment
APPLICATION OF Max Realty Corporation
BY Shutts and Bowen, LLP, AGENT
(The Falls Commercial MUPD)

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 ZV/DOA/R-2016-01826 was presented to the Board of County Commissioners at a public hearing conducted on July 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 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 ZV/DOA/R-2016-01826, the Application of Max Realty Corporation, by Shutts and Bowen, LLP, Agent, for a Development Order Amendment to reconfigure the Site Plan; add square footage; modify and delete square footage; and, modify and delete Conditions of Approval (Architectural, Engineering, Planned Development, Signs), 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 July 27, 2017, subject to the Conditions of Approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner McKinlay moved for the approval of the Resolution.

The motion was seconded by Commissioner Kerner 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	-	Absent
Commissioner Dave Kerner	-	Aye
Commissioner Steven L. Abrams	-	Absent
Commissioner Mary Lou Berger	-	Aye
Commissioner Mack Bernard	-	Aye

The Mayor thereupon declared that the resolution was duly passed and adopted on July 27, 2017.

Filed with the Clerk of the Board of County Commissioners on August 2nd, 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



The seal is circular with a double-line border. The outer ring contains the text 'PALM BEACH COUNTY COMMISSIONERS' at the top and 'BO' at the bottom. The inner ring contains 'PALM BEACH COUNTY' at the top and 'FLORIDA' at the bottom. A five-pointed star is positioned at the bottom center of the seal.

EXHIBIT A

LEGAL DESCRIPTION

A parcel of land lying within the plat of the FALLS COUNTRY CLUB, as recorded in Plat Book 61, Page 177, Palm Beach County Florida, being more particularly described as follows:

COMMENCE at the Southeast corner of said plat, said corner indicated as the POINT OF BEGINNING of the platted boundary;

thence South 89°07'17" West, along the South line of said plat (the South line of said plat is assumed to bear South 89°07'17" West and all other bearings are relative thereto), a distance of 11.92 feet to the POINT OF BEGINNING of the hereinafter described parcel;

thence continue South 89°07'17" West, along said South line, a distance of 577.21 feet to a point;

thence North 44°42'32" East, departing said South line, a distance of 310.82 feet to a point;

thence North 55°04'03" East a distance of 239.49 feet to a point;

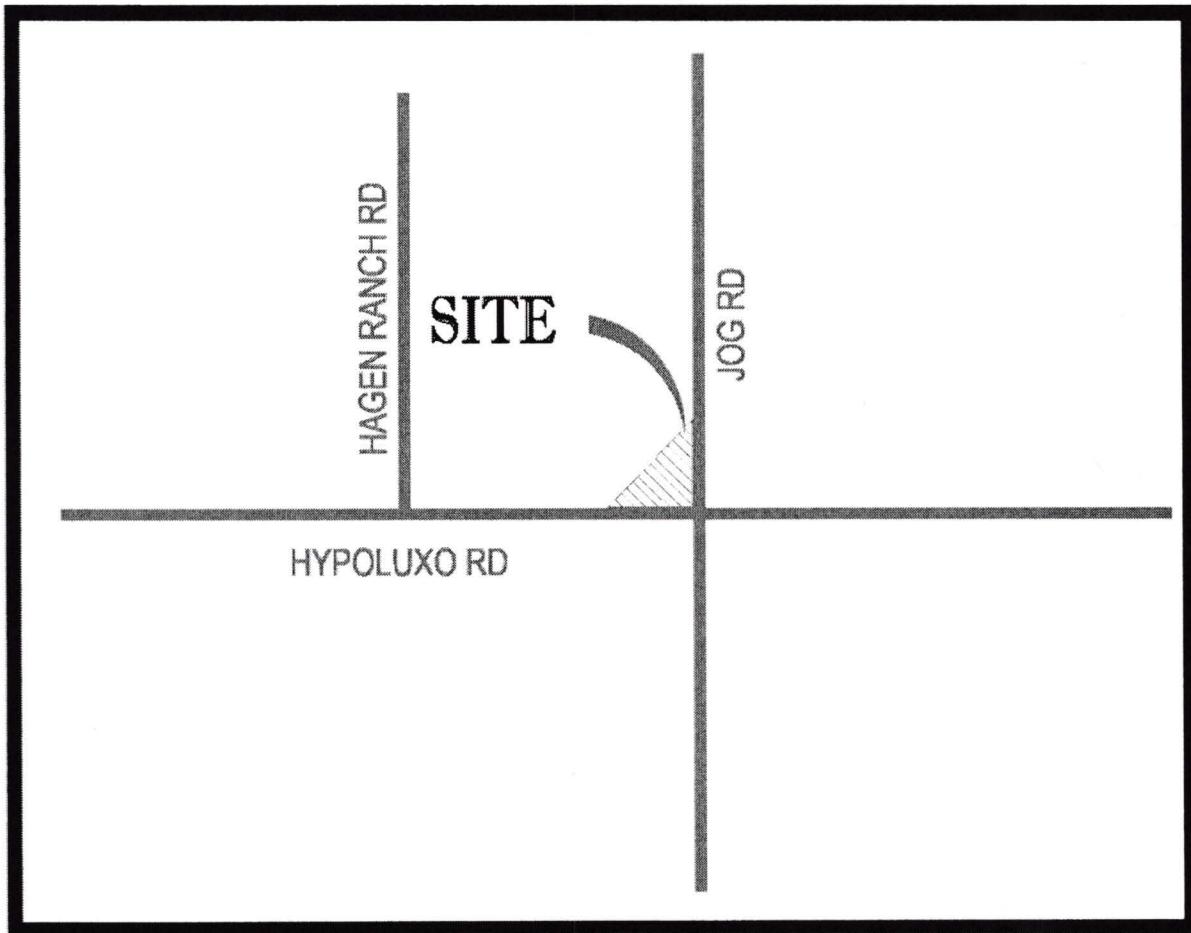
thence North 44°57'37" East a distance 236.28 feet to a point on the East line of said plat;

thence South 00°47'15" East, along said East line, a distance of 347.78 feet to a point;

thence South 03°15'34" West, along the West line of "Additional Thoroughfare Right-of-Way", a distance of 1 68.90 feet to the POINT OF BEGINNING.

Containing in all 3.511 acres, more or less.

EXHIBIT B
VICINITY SKETCH



LOCATION MAP
SCALE: N.T.S.

EXHIBIT C

CONDITIONS OF APPROVAL

Development Order Amendment

ALL PETITIONS

1. Previous ALL PETITIONS Condition 1 of Resolution R-2016-131, Control No.1985-00155, which currently states:

The approved Preliminary Site, Regulating, and Master Sign Plans are dated October 15, 2015; the Preliminary Architectural Elevations are dated May 22, 2015; and the Preliminary Landscape Plan is dated December 7, 2015. 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 (DRO) as established in the Unified Land Development Code, must be approved by the Board of County Commissioners or the Zoning Commission.

Is hereby amended to read:

The approved Preliminary Site Plan is dated April 24, 2017; and Preliminary Regulating, Master Sign Plans, and the Preliminary Architectural Elevations are dated May 11, 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 (DRO) as established in the Unified Land Development Code, must be approved by the Board of County Commissioners or the Zoning Commission. (ONGOING: ZONING - Zoning)

2. All previous Conditions of Approval applicable to the subject property, as contained in Resolution R-2016-0131 (Control 1985-00155), 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: MONITORING - Zoning)

ARCHITECTURAL REVIEW

1. Previous ARCHITECTURAL REVIEW Condition 1 of Resolution R-2016-131, Control No.1985-00155, which currently states:

At time of submittal for Final Approval by the DRO, the Architectural Elevations for Buildings #1 and #2 shall be submitted for final approval by the Zoning Division. Architectural Elevations shall comply with the standards indicated in Article 5.C of the Unified Land Development Code (ULDC) and shall be generally consistent with the Architectural Elevations dated May 22, 2015. Development shall be consistent with the approved Architectural Elevations, the DRO approved Final Plan, all applicable Conditions of Approval, and all ULDC requirements.

Is hereby amended to read:

At time of submittal for Final Approval by the DRO, the Architectural Elevations for Buildings #1 and #2 shall be submitted for final approval by the Zoning Division. Architectural Elevations shall comply with the standards indicated in Article 5.C of the Unified Land Development Code (ULDC) and shall be generally consistent with the Architectural Elevations dated May 11, 2017. Development shall be consistent with the approved Architectural Elevations, the DRO approved Final Plan, all applicable Conditions of Approval, and all ULDC requirements. (DRO/ONGOING: 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 December 31, 2019. 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) (Previous ENGINEERING Condition 1 of Resolution R-2016-131, Control No.1985-00155)

2. Prior to issuance of the first building permit, the Property Owner shall combine the property into a single lot of record in accordance with provisions of Article 11 of the Unified Land Development Code. (BLDGPM: MONITORING - Engineering) (Previous ENGINEERING Condition 2 of Resolution R-2016-131, Control No.1985-00155)

3. The Property Owner shall construct a right turn lane, east approach at the Project's east access point on Hypoluxo Road, and a driveway connection to serve as additional project access that aligns with the Charleston Square commercial driveway on Hypoluxo Road approximately 850 feet west of Jog 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. Prior to the issuance of the first building permit, permits required from Palm Beach County for this construction shall be obtained. (BLDGPM: MONITORING - Engineering)

b. Prior to the issuance of the first Certificate of Occupancy, construction shall be completed. (BLDGPM/CO: MONITORING - Engineering) (Previous ENGINEERING Condition 3 of Resolution R-2016-131, Control No.1985-00155)

4. The Property Owner shall reconstruct / extend the northbound and southbound left-turn lanes at the intersection of Hypoluxo Road and Jog Road by reducing the tapers to 50 feet for single left-turn lane and 100 feet for dual left-turn lanes.

a. Prior to the issuance of the first building permit, permits required from Palm Beach County for this construction shall be obtained. (BLDGPM: MONITORING - Engineering) [Note: COMPLETED]

b. Prior to the issuance of the first Certificate of Occupancy, construction shall be completed. (BLDGPM/CO: MONITORING - Engineering) (Previous ENGINEERING Condition 4 of Resolution R-2016-131, Control No.1985-00155)

5. Prior to final approval of the Site Plan by the DRO, the Property Owner shall obtain and record proper drainage easements to allow for drainage from project site to connect to point of legal positive outfall. (DRO: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 5 of Resolution R-2016-131, Control No.1985-00155)

6. Prior to final approval of the Site Plan by the DRO, the Concurrency Box included in the Site Plan needs to be consistent with the land uses included in the Traffic Study. (DRO: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 6 of Resolution R-2016-131, Control No.1985-00155)

7. The Property Owner shall construct a right turn lane, north approach on Jog Road at the Project's entrance.

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)

8. Property Owner shall construct a 5 foot wide concrete sidewalk along the south property

line of the project as shown on the approved site plan. 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)

9. Prior to the issuance of the first Certificate of Occupancy, the Property Owner shall provide a traffic signal proportionate payment of \$75,000 to the Palm Beach County Engineering Department's Traffic Division towards the installation of a traffic signal at the western-most access connection on Hypoluxo Road that aligns with the median opening of the shopping center to the south. (BLDGPM/CO: MONITORING - Engineering)

10. The Property Owner shall design, install, and perpetually maintain median landscape within the median of all abutting right of way of Jog Road. 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 Board of County Commissioner's approval. Median landscaping installed by the 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 and d below.

a. The necessary permit(s) for this landscaping and irrigation shall be applied for from Palm Beach County Land Development prior to the issuance of the first building permit. (BLDGPM/CO: 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. At Property Owner's option, when and if the County is ready to install OTIS on the surrounding medians of this roadway adjacent to the Property Owner installed landscaping, payment for the maintenance may be provided to the County. The payment shall be in the amount and manner that complies with the schedule for such payments that exists on the date payment is made. Once payment has been provided, Palm Beach County shall assume the maintenance responsibility for the OTIS landscaping and irrigation that has been installed by the Property Owner. The Property Owner shall first be required to correct any deficiencies in the landscaping and irrigation. This option is not available to medians with additional landscaping beyond OTIS standards, unless those medians are first brought into conformance with OTIS standards by the Property Owner. (ONGOING: MONITORING - Engineering)

d. 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 the 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 Jog Road. 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/CO: MONITORING - Engineering)

ENVIRONMENTAL

1. Prior to Final Plan approval by the Development Review Officer, the Property Owner shall submit an application for the Preservation of Native Vegetation to the Department of Environmental Resources Management (ERM). (DRO: ENVIRONMENTAL RESOURCES MANAGEMENT - Environmental Resources Management)

2. Prior to Final Plan Approval by the Development Review Officer (DRO), the Property Owner shall submit (select one or more: Site Plan, Subdivision Plan, Landscape Plan or Alternate Landscape Plan) with a Tree Disposition Chart for review and approval. All vegetation that is subject to be preserved, relocated, replaced or mitigated shall be clearly identified on the Plan(s) and the Tree Disposition Chart, per Technical Manual, Title 4. The Plan(s) shall show:

a) the temporary location for the relocated vegetation and identify what type of tree barricades will be utilized;

- b) the location of all preserved vegetation and identify what type of the permanent tree barricades/ protection devices will be utilized;
- c) a Justification Statement describing the maintenance of the relocated vegetation prior to the installation of the vegetation to a new location, and the length of time associated with the temporary storage of the relocated vegetation; and
- d) the above requirements (a thru c) shall be updated in the Tree Disposition Chart.
(DRO: ENVIRONMENTAL RESOURCES MANAGEMENT - Environmental Resources Management)

3. No vegetation shall be removed or relocated and no Preservation of Native Vegetation permit; pursuant to ULDC Article 14.C, shall be issued until ERM conditions 1 and 2 are satisfied. (ONGOING: ERM-ERM)

LANDSCAPE - GENERAL

1. At time of submittal for Final Approval by the DRO, the Property Owner shall submit a Landscape Plan for final review and approval by the Zoning Division, for compliance with the exception criteria for a Type I Restaurant. The Plan(s) shall be in compliance with all landscape related Conditions of Approval as contained herein. (DRO: ZONING - Zoning) [Note: COMPLETED] (Previous LANDSCAPE - GENERAL Condition 1 of Resolution R-2016-131, Control No.1985-00155)

2. All palms or pines required to be planted on the property shall meet the following minimum standards at installation:

- a. palm or pine heights: Fourteen (14) feet clear trunk;
- b. clusters: staggered heights twelve (12) to eighteen (18) feet; and,
- c. credit may be given for existing or relocated palms or pines provided they meet current Unified Land Development Code requirements. (BLDGPM/ONGOING: ZONING - Zoning) (Previous LANDSCAPE - GENERAL Condition 2 of Resolution R-2016-131, Control No.1985-00155)

LANDSCAPE - PERIMETER

3. LANDSCAPING ALONG THE SOUTH AND EAST PROPERTY LINES (FRONTAGE OF JOG ROAD AND HYPOLUXO ROAD) In addition to the Code requirements, landscape buffering along the south and east 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.
- c. palm or pines heights: fourteen (14) feet clear trunk;
- d. clusters: staggered heights twelve (12) to eighteen (18) feet; and,
- e. credit may be given for existing or relocated palms or pines provided they meet current Unified Land Development Code requirements.

(BLDGPM/ONGOING: ZONING - Zoning) (Previous LANDSCAPE - PERIMETER Condition 3 of Resolution R-2016-131, Control No.1985-00155)

LAKE WORTH DRAINAGE DISTRICT

1. Prior to Final DRO Approval, LWDD will require the Site Plan and the Survey to depict the L-18 Canal Right-of-Way with labeling, tying to an accepted control, either horizontal or plat, and dimension the width of the canal and show the following recording information, including dimensioning said easements/deed: ORB 1585 PG 505; ORB 3289 PG 49; and LWDD quit claimed to PBC per ORB 6698 PG 360.

(DRO: ENGINEERING - Lake Worth Drainage District) (Previous LAKE WORTH DRAINAGE DISTRICT Condition 1 of Resolution R-2016-131, Control No.1985-00155)

PLANNED DEVELOPMENT

1. Prior to Final Approval by the Development Review Officer, the Site and Regulating Plans shall be revised to show a minimum of one pedestrian amenity to create a pedestrian friendly atmosphere. Suggested amenities include, but are not limited to:

- a) public art;
- b) clock tower;
- c) water feature/fountain;
- d) outdoor patio, courtyard or plaza; and

e) tables with umbrellas for open air seating in common areas and not associated with tenant use (i.e. restaurant use) or outdoor furniture.

The amenity and location shall be approved by the DRO. (DRO/ONGOING: ZONING - Zoning) (Previous PLANNED DEVELOPMENT Condition 1 of Resolution R-2016-131, Control No.1985-00155)

SIGNS

1. Previous SIGNS Condition 1 of Resolution R-2016-131, Control No.1985-00155, which currently states:

1. Ground Mounted Freestanding signs fronting on Jog Road shall be limited as follows:

a) Maximum number: two (2)

b) Maximum sign location and dimensions:

i) Sign A near the northern ingress and egress: twelve (12) feet in height and one-hundred and fifty (150) square feet sign face area;

ii) Sign B, within 150 feet of the intersection of Jog and Hypoluxo: six (6) feet in height and sixty (60) square feet sign face area;

c) All sign heights shall be measured from finished grade to highest point;

d) no additional out-parcel signage shall be permitted; and

e) style - monument style only.

Is hereby amended to read:

1. Ground Mounted Freestanding signs fronting on Jog Road shall be limited as follows:

a) Maximum number: two (2)

b) Maximum sign location and dimensions:

i) Sign #1, near the northern ingress and egress: twelve (12) feet in height and one-hundred and fifty (150) square feet sign face area;

ii) Sign #2, within 150 feet of the intersection of Jog and Hypoluxo: six (6) feet in height and sixty (60) square feet sign face area;

c) All sign heights shall be measured from finished grade to highest point;

d) no additional out-parcel signage shall be permitted; and

e) style - monument style only. (BLDG/PMT/ONGOING: BUILDING DIVISION - Zoning)

2. Previous SIGNS Condition 2 of Resolution R-2016-131, Control No.1985-00155, which currently states:

Ground Mounted Freestanding signs fronting on Hypoluxo Road shall be limited as follows:

a) Maximum number: two (2)

b) Maximum sign locations and dimensions:

i) Sign C near the western ingress egress: fifteen (15) feet in height and one-hundred and fifty (150) square feet sign face area;

ii) Sign D shall be located within 150 feet of the intersection of Hypoluxo Road and Jog: six (6) feet in height and sixty (60) square feet;

c) sign height shall be measured from finished grade to highest point;

d) no additional out-parcel signage shall be permitted; and

e) style - monument style only.

Is hereby amended to read:

Ground Mounted Freestanding signs fronting on Hypoluxo Road shall be limited as follows:

a) Maximum number: two (2)

b) Maximum sign locations and dimensions:

i) Sign #3, near the western ingress egress: fifteen (15) feet in height and one-hundred and fifty (150) square feet sign face area;

ii) Sign #4, shall be located within 150 feet of the intersection of Hypoluxo Road and Jog: six (6) feet in height and sixty (60) square feet;

c) sign height shall be measured from finished grade to highest point;

d) no additional out-parcel signage shall be permitted; and

e) style - monument style only. (BLDG/PMT: BUILDING DIVISION - Zoning)

USE LIMITATIONS

1. Prior to Final Approval by the Development Review Officer, the Site Plan shall be amended to indicate facilities for the provision of free air and water for customer convenience. (DRO/ONGOING: 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)

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; 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)

DISCLOSURE

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

