

RESOLUTION NO. R-2019-0556

RESOLUTION APPROVING ZONING APPLICATION ZV/DOA/CA-2018-01558
(CONTROL NO. 1991-00037)
Class A Conditional Use
APPLICATION OF BW Southern and Benoist, LLC
BY Dunay, Miskel and Backman, LLP, AGENT
(Wawa SB 1327)

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 (Application Processes and Procedures) of the Palm Beach County Unified Land Development Code, Ordinance 2003-067, Supplement 23, have been satisfied;

WHEREAS, Zoning Application ZV/DOA/CA-2018-01558 was presented to the Board of County Commissioners at a public hearing conducted on April 25, 2019;

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 (Application Processes and 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 Processes) for Class A Conditional Use;

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.B.6.C (Board Action) 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/CA-2018-01558, the Application of BW Southern and Benoist, LLC, by Dunay, Miskel and Backman, LLP, Agent, for Class A Conditional Use to allow a Type 1 Restaurant with a Drive-through, 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 25, 2019, subject to the Conditions of Approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Weinroth 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 Mack Bernard, Mayor	-	Aye
Commissioner Dave Kerner, Vice Mayor	-	Aye
Commissioner Hal R. Valeche	-	
Commissioner Gregg K. Weiss	-	Aye
Commissioner Robert S. Weinroth	-	Aye
Commissioner Mary Lou Berger	-	Aye
Commissioner Melissa McKinlay	-	Absent

The Mayor thereupon declared that the resolution was duly passed and adopted on April 25, 2019.

Filed with the Clerk of the Board of County Commissioners on May 1, 2019.

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
COUNTY
FLORIDA



EXHIBIT A

LEGAL DESCRIPTION

DESCRIPTION A

PARCEL 1:

THE WESTERLY 100 FEET OF THE WEST 400 FEET OF THE EAST 435 FEET OF TRACT 37, BLOCK 7, PALM BEACH FARMS COMPANY, PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 2, PAGE 45, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

LESS AND EXCEPT THE LANDS CONVEYED TO COUNTY OF PALM BEACH IN DEED BOOK 1039, PAGE 609, - PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

PARCEL 2:

THE EAST 150 FEET OF THE SOUTH 300 FEET OF THE WEST 555 FEET OF TRACT 37, BLOCK 7, PALM BEACH FARMS COMPANY, PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 2, PAGE 45, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

EXCEPTING THEREFROM A STRIP OF LAND 40 FEET IN WIDTH ON EACH SIDE OF A CENTER LINE OF COUNTY ROAD AND ALSO EXCEPTING THEREFROM ANY EXISTING RIGHTS OF WAY FOR ANY AND ALL PUBLIC UTILITIES. ALSO EXCEPTING THEREFROM THE PARCEL OF LAND CONVEYED TO COUNTY OF PALM BEACH IN THE STATE OF FLORIDA BY DEED RECORDED IN DEED BOOK 1024, PAGE 379.

AND EXCEPTING FROM PARCELS 1 AND 2 THE FOLLOWING:

A PORTION OF TRACT 37, BLOCK 7, THE PALM BEACH FARMS CO. PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGE 45 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING IN SECTION 32, TOWNSHIP 43 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID TRACT 37; THENCE SOUTH 00 DEGREES 59 MINUTES 41 SECONDS EAST ALONG THE WEST LINE OF SAID TRACT 37 AND THE WEST LINE OF THE AMENDED PLAT OF CLAREMONT, AS RECORDED IN PLAT BOOK 15, PAGE 57, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, A DISTANCE OF 116.237 METERS (381.36 FEET) TO A POINT ON THE NORTHERLY EXISTING RIGHT OF WAY LINE FOR STATE ROAD 80 (SOUTHERN BOULEVARD) AS SHOWN ON THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP FOR SECTION 93.120-2543; THENCE SOUTH 88 DEGREES 26 MINUTES 26 SECONDS EAST ALONG SAID NORTHERLY EXISTING RIGHT OF WAY LINE, A DISTANCE OF 123.458 METERS (405.04 FEET) TO THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 59 MINUTES 41 SECONDS WEST, A DISTANCE OF 26.801 METERS (87.93 FEET), THENCE SOUTH 88 DEGREES 21 MINUTES 12 SECONDS EAST, A DISTANCE OF 76.043 METERS (249.48 FEET); THENCE SOUTH 00 DEGREES 59 MINUTES 41 SECONDS EAST, A DISTANCE OF 26.685 METERS (87.55 FEET) TO A POINT ON SAID NORTHERLY EXISTING RIGHT OF WAY LINE FOR STATE ROAD 80 (SOUTHERN BOULEVARD); THENCE NORTH 88 DEGREES 26 MINUTES 26 SECONDS WEST, A DISTANCE OF 76.038 METERS (249.47 FEET) TO THE POINT OF BEGINNING.

TOGETHER WITH:

DESCRIPTION B

ALL OF THE FOLLOWING DESCRIBED PROPERTY, LESS THE WESTERLY 100 FEET THEREOF:

THE WEST 369 FEET OF THE EAST 435 FEET OF TRACT 37, BLOCK 7, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 45, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA. LESS THAT PORTION CONVEYED TO COUNTY OF PALM BEACH IN DEED BOOK 1039, PAGE 609. ALSO LESS THE LANDS CONVEYED TO JAY S. EATON AND

MAXINE P. EATON, HIS WIFE, BY WARRANTY DEED RECORDED IN O.R. BOOK 871, PAGE 442, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTH LINE OF TRACT 37, BLOCK 7, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 45, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; SAID POINT BEING 285 FEET WEST OF THE NORTHEAST CORNER OF TRACT 37, MEASURED ALONG THE NORTH LINE OF SAID TRACT; THENCE EASTERLY ALONG SAID NORTH LINE A DISTANCE OF 220.85 FEET, MORE OR LESS, TO THE WESTERLY RIGHT-OF-WAY LINE OF BENOIST ROAD; THENCE SOUTHERLY, MAKING AN ANGLE WITH THE PRECEDING COURSE OF 90° 05' 00" MEASURED FROM WEST TO SOUTH ALONG SAID WESTERLY LINE OF WESTERLY RIGHT-OF-WAY OF BENOIST ROAD, A DISTANCE OF 219.89 FEET, THENCE WESTERLY MAKING AN ANGLE WITH THE PRECEDING COURSE OF 87°28'30", MEASURED FROM NORTH TO WEST, A DISTANCE OF 221.30 FEET TO A POINT; THENCE NORTHERLY ALONG A LINE PARALLEL TO THE WEST LINE OF TRACT 37 TO THE POINT OF BEGINNING.

LESS THAT PORTION TAKEN BY THE ORDER OF TAKING, PARCEL 125, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PORTION OF TRACT 37, BLOCK 7, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGE 45 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING IN SECTION 32, TOWNSHIP 43 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID TRACT 37; THENCE SOUTH 0°59'41" EAST ALONG THE WEST LINE OF SAID TRACT 37 AND THE WEST LINE OF AMENDED PLAT OF CLAREMONT, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 15, PAGE 57 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, A DISTANCE OF 116.237 METERS (381.36 FEET) TO A POINT ON THE NORTHERLY EXISTING RIGHT OF WAY LINE FOR STATE ROAD 80 (SOUTHERN BOULEVARD) AS SHOWN ON THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP FOR SECTION 93120-2543; THENCE SOUTH 88°26'26" EAST ALONG SAID NORTHERLY EXISTING RIGHT OF WAY LINE, A DISTANCE OF 199.496 METERS (654.51 FEET) TO THE POINT OF BEGINNING; THENCE NORTH 00°59'41" WEST, A DISTANCE OF 26.685 METERS (87.55 FEET); THENCE SOUTH 88°21'12" EAST, A DISTANCE OF 67.104 METERS (220.16 FEET); THENCE NORTH 46°18'22" EAST, A DISTANCE OF 9.085 METERS; (29.81 FEET); THENCE NORTH 00°59'41" WEST, A DISTANCE OF 28.598 METERS (93.83 FEET); THENCE SOUTH, 88°26'26" EAST, A DISTANCE OF 8.290 METERS (27.20 FEET); TO A POINT ON THE WESTERLY EXISTING RIGHT OF WAY LINE FOR BENOIST FARMS ROAD; THENCE SOUTH 00°59'41" EAST ALONG SAID WESTERLY EXISTING RIGHT OF WAY LINE, A DISTANCE OF 61.639 METERS (202.23 FEET) TO A POINT ON THE NORTHERLY EXISTING RIGHT OF WAY LINE FOR SAID STATE ROAD 80 (SOUTHERN BOULEVARD); THENCE NORTH 88°26'26" WEST ALONG SAID NORTHERLY EXISTING RIGHT OF WAY LINE, A DISTANCE OF 82.073 METERS (269.27 FEET) TO THE POINT OF BEGINNING.

TOGETHER WITH:

DESCRIPTION: C

BEGINNING AT A POINT IN THE NORTH LINE OF TRACT 37, BLOCK 7, THE PALM BEACH FARMS CO. PLAT NO. 3, ACCORDING TO THE PLAT THEREOF ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA, RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, INCLUSIVE, SAID POINT BEING 285 FEET WEST OF THE NORTHEAST CORNER OF TRACT 37, MEASURED ALONG THE NORTH LINE OF SAID TRACT; THENCE EASTERLY ALONG SAID NORTH LINE A DISTANCE OF 220.85 FEET, MORE OR

LESS, TO THE WESTERLY RIGHT-OF-WAY LINE OF BENOIST ROAD; THENCE SOUTHERLY, MAKING AN ANGLE WITH THE PRECEDING COURSE OF 90 DEGREES, 05 MINUTES, 00 SECONDS MEASURED FROM WEST TO SOUTH ALONG SAID WESTERLY LINE OF WESTERLY RIGHT-OF-WAY OF BENOIST ROAD, A DISTANCE OF 219.89 FEET, THENCE WESTERLY MAKING AN ANGLE WITH THE PRECEDING COURSE OF 87 DEGREES, 28 MINUTES, 30 SECONDS, MEASURED FROM NORTH TO WEST, A DISTANCE OF 221.30 FEET TO A POINT; THENCE NORTHERLY ALONG A LINE PARALLEL TO THE WEST LINE OF TRACT 37 TO THE POINT OF BEGINNING. LESS AND EXCEPT RIGHT OF WAY CONVEYED TO PALM BEACH COUNTY, BY RIGHT OF WAY WARRANTY DEED RECORDED MARCH 19, 1992 IN OFFICIAL RECORDS BOOK 7165, PAGE 726, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

CONTAINING 136,231 SQUARE FEET/3.1274 ACRES MORE OR LESS.

ALSO KNOWN AS

DESCRIPTION:

A PORTION OF THE AMENDED PLAT OF CLAREMONT, AS RECORDED IN PLAT BOOK 15, PAGE 57, TOGETHER WITH A PORTION OF TRACT 37, BLOCK 7, THE PALM BEACH FARMS CO. PLAT NO. 3, AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, BOTH OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING IN SECTION 32, and TOWNSHIP 43 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID AMENDED PLAT OF CLAREMONT; THENCE N.89°01'00"E. ALONG THE NORTH LINE OF SAID TRACT 37, BLOCK 7, A DISTANCE OF 318.57 FEET TO A POINT OF INTERSECTION WITH THE WEST RIGHT-OF-WAY LINE OF BENOIST FARMS ROAD, AS RECORDED IN OFFICIAL RECORD BOOK 7165, PAGE 726 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE S.00°13'16"E. ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 217.59 FEET; THENCE S.88°26'26"E. ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 25.06 FEET; THENCE S.00°56'52"E. ALONG THE WEST RIGHT-OF-WAY LINE OF BENOIST FARMS ROAD, AS RECORDED IN OFFICIAL RECORD BOOK 13751, PAGE 1427 OF SAID PUBLIC RECORDS, A DISTANCE OF 91.53 FEET; THENCE S.46°19'18"W. ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 29.82 FEET; THENCE N.88°21'12"W., ALONG THE NORTH RIGHT-OF-WAY LINE OF SOUTHERN BOULEVARD (STATE ROAD 80), AS RECORDED IN OFFICIAL RECORD BOOK 13751, PAGE 1427 AND OFFICIAL RECORD BOOK 13672, PAGE 645 OF SAID PUBLIC RECORDS, A DISTANCE OF 469.31 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY LINE, N.00°58'10"W., A DISTANCE OF 208.88 FEET; THENCE S.88°23'38"E., A DISTANCE OF 150.15 FEET TO A POINT OF INTERSECTION WITH THE EAST LINE OF SAID AMENDED PLAT OF CLAREMONT; THENCE N.00°58'10"W. ALONG SAID EAST LINE, A DISTANCE OF 106.80 FEET TO THE POINT OF BEGINNING.

CONTAINING 136,231 SQUARE FEET/3.1274 ACRES MORE OR LESS.

EXHIBIT B
VICINITY SKETCH

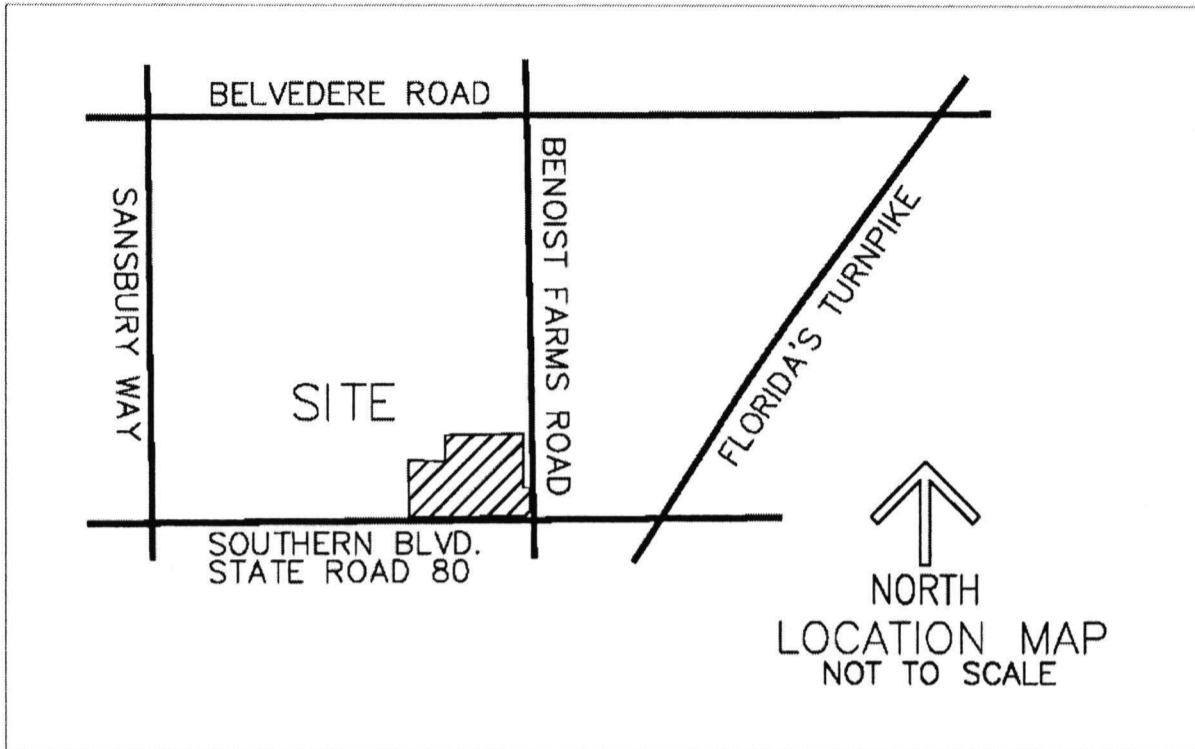


EXHIBIT C

CONDITIONS OF APPROVAL

Class A Conditional Use

ALL PETITIONS

1. The approved Preliminary Site Plan is dated February 6, 2019. 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)

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 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: MONITORING - Zoning)

DISCLOSURE

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