

RESOLUTION NO. R-2021-0957

RESOLUTION APPROVING ZONING APPLICATION ZV/PDD/DOA/CA-2020-02096
(CONTROL NO. 2001-00005)
TRANSFER OF DEVELOPMENT RIGHTS (TDR)
APPLICATION OF Morningstar Nursery, Inc., Hypoluxo Village Owner, LLC
BY Toothaker.org, JMorton Planning & Landscape Architecture, AGENT
(Hypoluxo Village 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 (Application Processes and Procedures) of the Palm Beach County Unified Land Development Code (ULDC), Ordinance 2003-067 as amended, have been satisfied;

WHEREAS, Zoning Application ZV/PDD/DOA/CA-2020-02096 was presented to the Board of County Commissioners at a public hearing conducted on July 22, 2021;

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 a 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/PDD/DOA/CA-2020-02096, the Application of Morningstar Nursery, Inc., Hypoluxo Village Owner, LLC, by Toothaker.org, JMorton Planning & Landscape Architecture, Agent, for a Class A Conditional Use to allow a Transfer of Development Rights (TDR), 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 22, 2021, 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 Sachs and, upon being put to a vote, the vote was as follows:

Commissioner Dave Kerner, Mayor	-	Aye
Commissioner Robert S. Weinroth, Vice Mayor	-	Aye
Commissioner Maria G. Marino	-	Aye
Commissioner Gregg K. Weiss	-	Aye
Commissioner Maria Sachs	-	Aye
Commissioner Melissa McKinlay	-	Aye
Commissioner Mack Bernard	-	Aye

The Mayor thereupon declared that the resolution was duly passed and adopted on July 22, 2021.

Filed with the Clerk of the Board of County Commissioners on July 27th, 2021.

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

JOSEPH ABRUZZO,
CLERK & COMPTROLLER

BY: 
COUNTY ATTORNEY

BY: 
DEPUTY CLERK



EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1

THE NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER, LESS AND EXCEPT RIGHT-OF-WAY FOR STATE ROAD 809 (MILITARY TRAIL) AND ORDER OF TAKING RECORDED IN OFFICIAL RECORDS BOOK 6074, PAGE 1822, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY AND THE NORTH 40 FEET, AND THE NORTHEAST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER, LESS THE NORTH 30 FEET, SECTION 1, TOWNSHIP 45 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA.

PARCEL 2

THE SOUTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 1, TOWNSHIP 45 SOUTH, RANGE EAST 42 EAST, PALM BEACH COUNTY, FLORIDA, LESS AND EXCEPT THE RIGHT-OF-WAY FOR MILITARY TRAIL AND LESS AND EXCEPT THE RIGHT-OF-WAY FOR HYPOLUXO ROAD.

PARCEL 3

THE WEST 370 FEET OF THE SOUTHEAST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 1, TOWNSHIP 45 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, LESS AND EXCEPT RIGHT-OF-WAY FOR HYPOLUXO ROAD.

AREA OF PROPERTY SURVEYED IS 31.98 ACRES, MORE OR LESS.

EXHIBIT B
VICINITY SKETCH

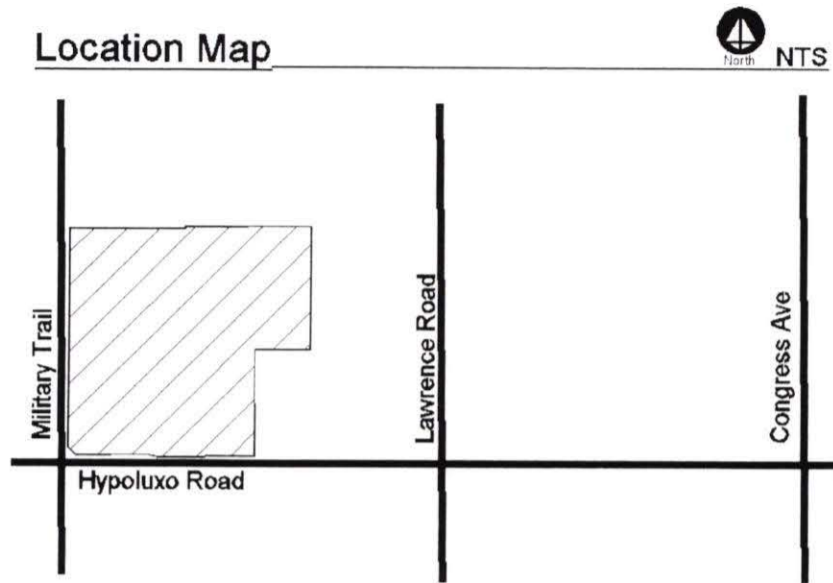


EXHIBIT C

CONDITIONS OF APPROVAL

Class A Conditional Use – Transfer of Development Rights (TDRs)

ALL PETITIONS

1. The approved Preliminary Site Plan is dated May 24, 2021. 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)

TRANSFER OF DEVELOPMENT RIGHTS

1. Prior to Final Approval by the Development Review Officer, the Property Owner shall execute a Contract for Sale and Purchase of Transfer of Development of Rights (TDRs) in a manner and form approved by the County Attorney, and formally executed by the Executive Director of Planning, Zoning and Building Department. The Contract shall accommodate 96 TDR units at a total selling price of \$1,286,535.00 (63 TDR units to be purchased at the Market Rate Multifamily price of \$19,900.00 per unit = \$1,253,700.00; and, 33 TDR units to be purchased at the WHP Multifamily price of \$995.00 per unit = \$32,835.00). Upon execution of the contract, the contract shall be recorded by the Property Owner, and a copy shall be provided to the Zoning Division. (DRO: ZONING - County Attorney)

2. Prior to Final Approval by the Development Review Officer, the Property Owner shall execute the Transfer of Development Rights Deed in a manner and form approved by the County Attorney, and formally executed by the Executive Director of Planning, Zoning and Building Department. (DRO: ZONING - County Attorney)

3. Prior to technical compliance of the plat or issuance of the first Building Permit, whichever occurs first, the Property Owner shall pay one hundred (100) percent of the Transfer of Development Rights (TDR) Funds to the Zoning Division. Upon payment of the funds, the TDR Deed shall be recorded by the Property Owner, and a copy shall be provided to the Zoning Division. (BLDGPM/TC: 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.