

RESOLUTION NO. R-2023- 0115

RESOLUTION APPROVING ZONING APPLICATION DOA/CAW-2022-00466
(CONTROL NO. 1986-00004)
a Development Order Amendment
APPLICATION OF Kanela Enterprise WPB, LLC - Nelson Tiburicio
BY Urban Design Studio, AGENT
(Diamond Plaza)

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 as amended (ULDC), have been satisfied;

WHEREAS, Zoning Application DOA/CAW-2022-00466 submitted on behalf of Kanela Enterprise WPB, LLC - Nelson Tiburicio by Urban Design Studio, Agent for a Development Order Amendment to modify uses, a Class A Conditional Use to allow a Cocktail Lounge within 250 feet of a parcel of land with a residential future land use designation or use, and a Type 2 Waiver to allow an extension of the hours of operation for a Non-Residential use located within 250 feet of a parcel of land with a residential future land use designation or use on 2.07 acres was presented to the Board of County Commissioners at a public hearing on January 26, 2023;

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 finds that the Zoning Application meets all the Standards contained in Article 2.B (Public Hearing Processes) based on the evidence and testimony submitted and presented at the public hearing conducted on January 26, 2023;

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 DOA/CAW-2022-00466, the Application of Kanela Enterprise WPB, LLC - Nelson Tiburicio, by Urban Design Studio, Agent, for a Development Order Amendment to modify uses on 2.07 acres, 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 January 26, 2023, subject to the Conditions of Approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Barnett moved for approval of the Resolution.

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

Commissioner Gregg K. Weiss, Mayor	- Absent
Commissioner Maria Sachs, Vice Mayor	- Aye
Commissioner Maria G. Marino	- Aye
Commissioner Michael A. Barnett	- Aye
Commissioner Marci Woodward	- Aye
Commissioner Sara Baxter	- Aye
Commissioner Mack Bernard	- Aye

The Mayor thereupon declared the resolution was duly passed and adopted on January 26, 2023.

Filed with the Clerk of the Board of County Commissioners on February 1, 2023

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

ALL OF THE WEST 448.58 FEET OF THE NORTH 264.67 FEET OF LOTS 3 AND 4, MODEL LAND COMPANY SUBDIVISION OF THE NORTH ONE-HALF (N 1/2) OF SECTION 24, TOWNSHIP 44 SOUTH, RANGE 42 EAST, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 5, PAGE 76, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; LESS THE NORTH 50.00 FEET AND THE WEST 28.00 FEET FOR ROAD RIGHT-OF-WAY PURPOSES.

MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT THE NORTH QUARTER CORNER OF SECTION 24, TOWNSHIP 44 SOUTH, RANGE 42 EAST OF PALM BEACH COUNTY, FLORIDA. THENCE SOUTH $01^{\circ}37'35''$ WEST, ALONG THE NORTH LINE OF SAID SECTION 24, A DISTANCE OF 90.50 FEET. THENCE SOUTH $88^{\circ}24'47''$ EAST, A DISTANCE OF 53 FEET TO THE POINT OF BEGINNING ON THE EASTERLY RIGHT-OF-WAY OF MILITARY TRAIL (STATE ROAD 809) DESCRIBED IN FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP SECTION NUMBER 93590-2603. THENCE SOUTH $87^{\circ}52'46''$ EAST, A DISTANCE OF 420.59 FEET, ALONG THE SOUTH RIGHT-OF-WAY LINE OF DIAMOND ROAD, LESSED OUT IN OFFICIAL RECORDS BOOK 22337, PAGE 451, FROM PLAT BOOK 5, PAGE 76. THENCE SOUTH $01^{\circ}37'35''$ WEST, ALONG A LINE PARALLEL 420.59 FEET FROM THE EASTERLY RIGHT OF WAY OF MILITARY TRAIL A DISTANCE OF 214.68 FEET. THENCE NORTH $87^{\circ}52'46''$ WEST, ALONG A PARALLEL LINE 214.68 FEET FROM THE SOUTHERLY RIGHT-OF-WAY OF DIAMOND ROAD A DISTANCE OF 420.59 FEET, THENCE NORTH $01^{\circ}37'35''$ EAST, ALONG SAID EASTERLY RIGHT-OF-WAY OF MILITARY TRAIL, A DISTANCE OF 214.68 TO THE POINT OF BEGINNING.

CONTAINING A TOTAL OF 2.073 ACRES/90290 SQUARE FEET, MORE OR LESS.

SAID PROPERTY IS SITUATED IN SECTION 24, TOWNSHIP 44 SOUTH, RANGE 42 EAST, OF PALM BEACH COUNTY, FLORIDA.

EXHIBIT B
VICINITY SKETCH

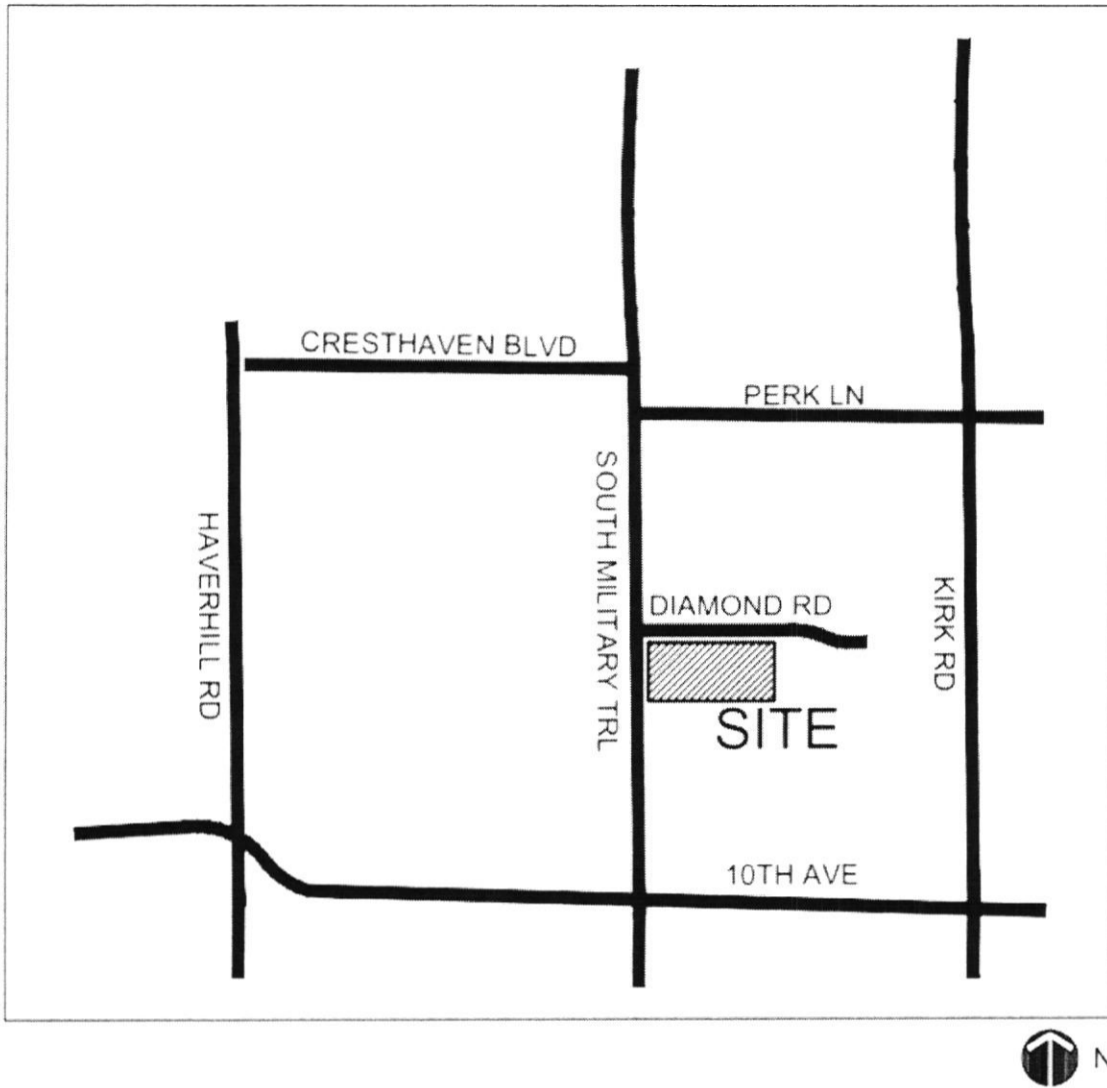


EXHIBIT C

CONDITIONS OF APPROVAL

Development Order Amendment

ALL PETITIONS

1. The approved Site Plan is dated May 23, 2022. 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 Commissioner. (ONGOING: ZONING - Zoning)

2. All previous Conditions of Approval applicable to the subject property, as contained in Resolution R-1986-00573-17 (Control 1986-0004), 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, unless expressly modified. (ONGOING: MONITORING - Zoning)

ENGINEERING

1. Previous ENGINEERING Condition 11 of Resolution R-1986-573-17, Control No.1986-00004, which currently states:

The development shall retain onsite 85% of the stormwater runoff generated by a three (3) year - one hour storm per requirements of the Permit Section, Land Development Division.

Is hereby deleted. [REASON: Code requirement]

2. Previous ENGINEERING Condition 12 of Resolution R-1986-573-17, Control No.1986-00004, which currently states:

The Developer 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 presently is \$54,732.00 (2,043 trips X \$26.79 per trip). (ONGOING: ENGINEERING - Engineering)

Is hereby deleted. [REASON: No longer applicable]

3. The property owner shall obtain an onsite Drainage Permit from the Palm Beach County Engineering Department Permit section prior to the application of a Building Permit. (BLDGPM: ENGINEERING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 14 of Resolution R-1986-573-17, Control No.1986-00004)

4. The property owner shall obtain a Turnout Permit from the Palm Beach County Engineering Department Permit Section for access on to Diamond Road and a permit from the Florida Department of Transportation for access onto Military Trail. (BLDGPM: ENGINEERING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 15 of Resolution R-1986-573-17, Control No.1986-00004)

5. The Property Owner shall provide to the Palm Beach County Right of Way Section of Roadway Production Division a warranty deed for road right of way and all associated documents as required by the County Engineer for the 25 foot clip at the intersection of Military Trail and Diamond Road at the northwest corner of the site.

All warranty deed(s) and associated documents, including a title policy naming Palm Beach County as an insured, shall be provided and approved prior to the issuance of the first building permit or within ninety (90) days of a request by the County Engineer, whichever shall occur first. Right of way conveyance shall be along the entire frontage and shall be free and clear of all encroachments and encumbrances. Property Owner shall provide Palm Beach County with sufficient documentation acceptable to the Right of Way Section to ensure that the property is free of all encumbrances and encroachments, including a topographic survey. The Property Owner must further warrant that the property being conveyed to Palm Beach County meets all appropriate and applicable environmental agency requirements. In the event of a determination of contamination which requires remediation or clean up on the property now owned by the Property Owner, the Property Owner agrees to hold the County harmless and shall be responsible for all costs of such clean up, including but not limited to, all applicable permit fees, engineering or other expert witness fees including attorney s fees as well as the actual cost of the clean up. Thoroughfare Plan Road right of way conveyances shall be consistent with Palm Beach County's

Thoroughfare Right of Way Identification Map and shall include, where appropriate as determined by the County Engineer, additional right of way for Expanded Intersections and Corner Clips. The Property Owner shall not record these required deeds or related documents. The Property Owner shall provide to the Right of Way Section a tax pro-ration. A check, made payable to the Tax Collector's Office, shall be submitted by the Property Owner for the pro-rated taxes. After final acceptance, Palm Beach County shall record all appropriate deeds and documents. (BLDG/PMT/ONGOING: MONITORING - Engineering)

HEALTH

1. Any fuel or chemical storage tanks shall be installed in accordance with Chapter 17 - 61, Florida Administrative Code. The design and installation plans will be submitted to the Health Department for approval prior to installation. (ONGOING: HEALTH DEPARTMENT - Zoning) (Previous Condition 6 of Resolution R-86-573-17, Control No.1986-004)
2. Any toxic or hazardous waste generated at this site shall be properly handled and disposed of in accordance with Chapter 17 - 30, F.A.C. (ONGOING: HEALTH DEPARTMENT - Zoning) (Previous Condition 7 of Resolution R-86-573-17, Control No.1986-004)
3. Reasonable precautions shall be exercised during site development to insure that unconfined particulates (dust particles) from this property do not become a nuisance to neighboring properties. (ONGOING: HEALTH DEPARTMENT - Zoning) (Previous Condition 8 of Resolution R-86-573-17, Control No.1986-004)
4. The owner of the facility will participate in an oil recycling program which insures proper reuse or disposal of waste oil. (ONGOING: HEALTH DEPARTMENT - Zoning) (Previous Condition 10 of Resolution R-86-573-17, Control No.1986-004)

LANDSCAPE - GENERAL

1. Prior to site plan certification, the site plan will be amended to reflect 8-10 foot canopy trees planted thirty (30) feet on center along all property lines abutting residentially zoned property where existing vegetation is insufficient. (ONGOING: CODE ENF - Zoning) (Previous SITE DESIGN Condition 1 of Resolution R-1986-573-17, Control No.1986-00004)

SITE DESIGN

1. The required six (6) foot high wall shall receive identical architectural treatment on both sides. (ONGOING: CODE ENF - Zoning) (Previous SITE DESIGN Condition 5 of Resolution R-1986-573-17, Control No.1986-00004)
2. No stock loading or dumpster pickup will be permitted between the hours of 8:00 p.m. and 8:00 a.m. (ONGOING: CODE ENF - Zoning) (Previous SITE DESIGN Condition 3 of Resolution R-1986-573-17, Control No.1986-00004)
3. Security lighting shall be directed away from nearby residences. (ONGOING: CODE ENF - Zoning) (Previous SITE DESIGN Condition 4 of Resolution R-1986-573-17, Control No.1986-00004)

USE LIMITATIONS

1. A minimum of 6,925 square feet of the project shall remain as general office use. (ONGOING: CODE ENF - Zoning) (Previous USE LIMITATIONS Condition 13 of Resolution R-1986-573-17, Control No.1986-00004)

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.