

RESOLUTION NO. ZR-2009-037

RESOLUTION APPROVING ZONING APPLICATION ZV-2009-02682
CONTROL NO. 2002-00011

TYPE II VARIANCE (STAND ALONE)
APPLICATION OF MPC 3 LLC
BY MCCRANEY PROPERTY CO., AGENT
(FUN DEPOT)

WHEREAS, the Palm Beach County Zoning Commission, pursuant to Article 2 (Development Review Procedures) of the Palm Beach County Unified Land Development Code (Ordinance 2003-067, as amended) is authorized and empowered to consider, approve, approve with conditions or deny a Type II Variance; and

WHEREAS, the notice and hearing requirements, as provided for in Article 2 of the Palm Beach County Unified Land Development Code, have been satisfied; and

WHEREAS, Zoning Application ZV-2009-02682 was presented to the Zoning Commission at a public hearing conducted on October 1, 2009; and

WHEREAS, the Zoning Commission considered the evidence and testimony presented by the applicant and other interested parties, and the recommendations of the various county review agencies; and

WHEREAS, this approval is subject to Article 2.E (Monitoring) of the Palm Beach County Unified Land Development Code and other provisions requiring that development commence in a timely manner; and

WHEREAS, the Zoning Commission has considered the following findings of fact:

1. Special conditions and circumstances exist that are peculiar to the parcel of land, building or structure, that are not applicable to other parcels of land, structures or buildings in the same Zoning District;
2. Special circumstances and conditions do not result from the actions of the applicant;
3. Granting the variance shall not confer upon the applicant any special privilege denied by the Comprehensive Plan and this Code to other parcels of land, buildings or structures in the same Zoning District;
4. Literal interpretation and enforcement of the terms and provisions of this Code would deprive the applicant of rights commonly enjoyed by other parcels of land in the same Zoning District, and would work an unnecessary and undue hardship;
5. Grant of the variance is the minimum variance that will make possible the reasonable use of the parcel of land, building or structure;
6. Grant of the variance will be consistent with the purposes, goals, objectives, and policies of the Comprehensive Plan and this Code; and,
7. The grant of the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

WHEREAS, Article 2.A.1.K.3.a (Action by ZC) of the Palm Beach County Unified Land Development Code requires that the action of the Zoning Commission be adopted by resolution.

WHEREAS the Chair declared that this resolution shall not become effective until the approval of Zoning Application Z-2009-2170,

NOW, THEREFORE, BE IT RESOLVED BY THE ZONING COMMISSION OF PALM BEACH COUNTY, FLORIDA, that Zoning Application ZV-2009-02682, the application of MPC 3 LLC, by McCraney Property Co., agent, for a Type II Variance to allow outdoor entertainment use activities to be operated outside of an enclosed building within the Palm Beach International Airport Overlay and to eliminate a landscape barrier wall, on a parcel of land legally described 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 October 1, 2009, subject to the conditions of approval described in EXHIBIT C, and variance request described in EXHIBIT D, attached hereto and made a part hereof.

Commissioner Hyman moved for the approval of the Resolution.

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

William Anderson, Chair	-	AYE
Sherry Hyman, Vice Chair	-	AYE
Allan Kaplan	-	AYE
Al Zucaro	-	AYE
Sheri Scarborough	-	AYE
Joanne Davis	-	AYE
Alex Brumfield III	-	AYE
Kelley Armitage	-	
Richard Bowman	-	

Filed with the Clerk of the Zoning Division on December 4, 2009

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BY ITS ZONING COMMISSIONERS

BY: 
COUNTY ATTORNEY

BY:  1
CHAIR

EXHIBIT A

LEGAL DESCRIPTION

BEING A PARCEL OF LAND BEING A PORTION OF TRACTS 9, 10 AND 11, BLOCK 5, PALM BEACH FARMS COMPANY PLAT No. 3 AS RECORDED IN PLAT BOOK 2 AT PAGES 45 THROUGH 54, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF TRACT "LW-3", TERRACINA, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 101, PAGES 91 THROUGH 105, INCLUSIVE, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY; THENCE SOUTH 89°02'42" WEST, ALONG THE WESTERLY PROLONGATION OF THE SOUTH LINE OF SAID TRACT "LW-3, A DISTANCE OF 40.80 FEET TO THE INTERSECTION THEREOF WITH THE EASTERLY PROLONGATION OF THE SOUTH LINE OF TRACT 24, BLOCK 6, OF SAID PALM BEACH FARMS COMPANY PLAT No. 3; THENCE SOUTH 89°04'57" WEST, ALONG SAID PROLONGED LINE AND SOUTH LINE OF TRACT 24, A DISTANCE OF 39.20 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF THAT 80.00 FOOT RIGHT OF WAY FOR CLEARY ROAD AS RECORDED IN OFFICIAL RECORDS BOOK 18457 AT PAGE 0961, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE ALONG SAID WEST RIGHT OF WAY OF CLEARY ROAD THE FOLLOWING SEVEN (7) COURSES; THENCE NORTH 00°58'54" WEST, A DISTANCE OF 1.10 FEET; THENCE NORTH 02°59'50" WEST, A DISTANCE OF 97.95 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE WEST, HAVING A RADIUS 676.00 FEET AND A CENTRAL ANGLE OF 28°17'22"; THENCE NORTHERLY, ALONG THE ARC OF SAID CURVE, A DISTANCE OF 333.77 FEET TO THE POINT OF TANGENCY; THENCE NORTH 31°17'12" WEST, A DISTANCE OF 158.95 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 756.00 FEET AND A CENTRAL ANGLE OF 60°02'35"; THENCE NORTHERLY, ALONG THE ARC OF SAID CURVE, A DISTANCE OF 792.25 FEET TO A POINT OF TANGENCY; THENCE NORTH 28°45'23" EAST, A DISTANCE OF 279.44 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 757.00 FEET AND A CENTRAL ANGLE OF 46°07'23"; THENCE NORTHEASTERLY, ALONG THE ARC OF SAID CURVE A DISTANCE OF 609.38 FEET TO A POINT OF TANGENCY; THENCE NORTH 74°52'47" EAST, 114.61 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL:

THENCE NORTH 34°27'35" WEST, DEPARTING SAID RIGHT OF WAY, A DISTANCE OF 399.38 FEET TO A POINT ON A LINE THAT IS 25.00 FEET SOUTHEAST OF AND PARALLEL WITH THE EAST LINE OF THE FLORIDA TURNPIKE RIGHT OF WAY AS SHOWN ON THE SUNSHINE STATE PARKWAY RIGHT OF WAY MAP STATION 2630+00 TO STATION 2703+28.33 PALM BEACH COUNTY, DATED JULY 12, 1955, SHEET 12 OF 13 AND DESCRIBED AS PARCEL 39 IN LIS PENDENS BOOK 25, PAGES 582-584; THENCE NORTH 40°39'09" EAST, ALONG SAID PARALLEL LINE, A DISTANCE OF 361.75 FEET TO A POINT ON A LINE THAT IS 99.00 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF THE NORTH 28.00 FEET OF SAID TRACTS 9 AND 10, BLOCK 5; THENCE NORTH 89°03'22" EAST, ALONG SAID PARALLEL LINE, A DISTANCE OF 723.06 FEET TO A POINT ON THE PREVIOUSLY DESCRIBED WEST RIGHT OF WAY LINE OF CLEARY ROAD, SAID POINT ALSO BEING A POINT ON A CURVE NON-TANGENT TO THE LAST-DESCRIBED LINE, SAID CURVE BEING CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 677.00 FEET, A CENTRAL ANGLE OF 66°08'52" AND A RADIAL LINE TO SAID POINT BEARS SOUTH 81°16'05" EAST; THENCE SOUTHWESTERLY, ALONG SAID WEST RIGHT OF WAY LINE AND ALONG THE ARC OF SAID CURVE, A DISTANCE OF 781.59 FEET TO A POINT OF TANGENCY; THENCE SOUTH 74°52'47" WEST, CONTINUING ALONG SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 248.70 FEET TO THE POINT OF BEGINNING.

SAID LANDS CONTAINING 393,118 SQUARE FEET OR 9.02 ACRES MORE OR LESS.

EXHIBIT B
VICINITY SKETCH

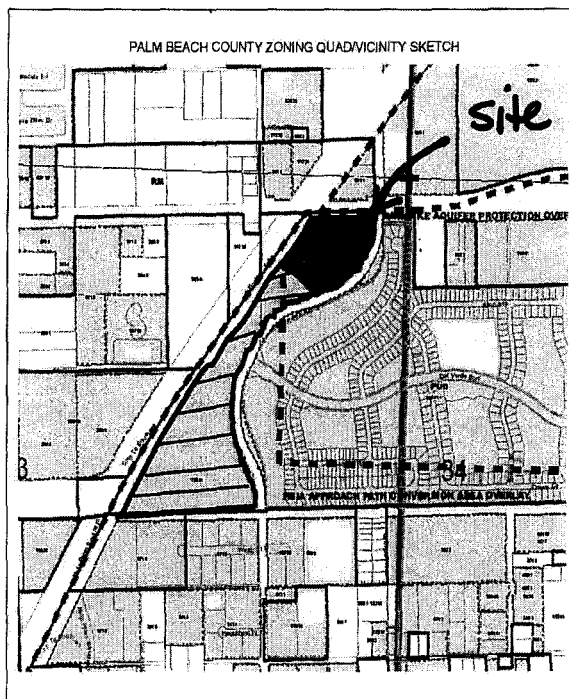


EXHIBIT C

CONDITIONS OF APPROVAL

VARIANCE

1.The Development Order for this variance shall be tied to the Time Limitations of the Development Order for application Z-2009-2170. (ONGOING: MONITORING - Zoning)

2.The variance from 3.B.10.G.3. PBAO, Enclosed Activities is limited to Outdoor Entertainment uses consisting of a go-cart track, batting cages, miniature golf course, and accessory activities that are an integral part of and supportive of the go-cart track, batting cages, and miniature golf course uses. (ONGOING: CODE ENF - Zoning)

3.Prior to final approval by the Development Review Officer (DRO), the approved variance(s) and any associated conditions of approval shall be reflected on the site plan. (DRO:ZONING-Zoning)

4.At time of application for a building permit, the property owner shall provide a copy of this variance approval and Final Site Plan to the Building Division. (BLDG PERMIT: ZONING-Landscape)

5.Prior to final approval by the Development Review Officer (DRO) the Cleary Road right-of-way buffer shall be upgraded to provide one canopy tree per 20 lineal feet. (DRO: ZONING - Zoning)

6.The Outdoor Entertainment activities shall be screened from view of the Cleary Road right-of-way by a building, a wall a minimum of 5 feet in height, or landscaping providing a minimum 5-foot high opaque solid vegetative screen. (ONGOING: ZONING - Zoning)

7.In granting this approval, the Zoning Commission 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)

8.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 (CO); 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; 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 (ULDC) 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)

EXHIBIT D

VARIANCE REQUEST

APPLICATION NO.	CODE SECTION	REQUIRED	PROPOSED	VARIANCE		
ZV-2009- 02682	Variance 1 (V.1) 3.B.10.G.3 Palm Beach International Airport Overlay (PBAO), Enclosed Activities Variance 2 (V.2.) 3.B.10.F.3.b PBAO, Mandatory Landscape Barrier	Activities shall be operated within enclosed buildings A solid concrete block and steel (CBS) wall not less than 6 feet in height adjacent to a residential development	outdoor entertainment uses to be operated outside of an enclosed building (go-cart track, batting cages, miniature golf course) in the PBAO No wall in the east right-of-way landscape buffer	To allow outdoor entertainment uses to be operated outside of an enclosed building (go-cart track, batting cages, miniature golf course) in the PBAO To eliminate a landscape barrier wall in the east right-of-way landscape buffer		
SITUS ADDRESS:	Southwest corner of Belvedere Road and Cleary Road (Vacant)					
AGENT NAME & ADDRESS:	Edna Trimble McCraney Property Co. 2257 Vista Pkwy West Palm Beach FL 33411					
OWNER NAME & ADDRESS:	MPC 3, LLC 2257 Vista Pkwy West Palm Beach FL 33411					
PCN:	(a portion of) 00-42-43-27-05-005-0091					
ZONING DISTRICT:	Existing: Planned Industrial Park Development (PIPD) Proposed through subsequent application: Commercial Recreation (CRE)					
BCC DISTRICT:	06					
PROJECT MANAGER:	Carol Glasser, Site Planner II					
LEGAL AD:	ZV-2009-02682 Title: Resolution approving a Type II Variance application of MPC 3 LLC by McCraney Property Co., Agent. Request: to allow outdoor entertainment use activities to be operated outside of an enclosed building within the Palm Beach International Airport Overlay and to eliminate a landscape barrier wall. General Location: Southwest corner of Belvedere Road and Cleary Road (FUN DEPOT) (2002-00011)					
LAND USE:	Existing: Low Residential, 2 units per acre (LR-2) Proposed through subsequent application: Commercial Recreation (CR)		S/T/R: 27-43-42			
CONTROL #:	2002-00011					
LOT AREA:	9.02 acres +/-					
APPLICANT REQUEST:	to allow outdoor entertainment use activities to be operated outside of an enclosed building within the Palm Beach International Airport Overlay and to eliminate a landscape barrier wall in the east right-of-way landscape buffer.					