

RESOLUTION NO. ZR-2008-049

RESOLUTION APPROVING ZONING APPLICATION ZV2007-1801
(CONTROL NO. 2007-00407)
TYPE II VARIANCE (CONCURRENT)
APPLICATION OF JOMAR FLORIDA ENTERPRISES, LLC
BY LAND DESIGN SOUTH, INC., AGENT
(1747 SOUTH MILITARY TRAIL)

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 ZV2007-1801 was presented to the Zoning Commission at a public hearing conducted on July 3, 2008; 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, this approval shall only become effective upon the adoption of a resolution approving Zoning Application CA2007-1801 by the Board of County Commissioners; and

WHEREAS, the Zoning Commission has considered the findings in the staff report and 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. The special circumstances and conditions do not result from the actions of the applicant and the approval of this variance will not grant any special privilege to the applicant;
3. Granting the variance does 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. This variance is the minimum variance that will make possible the reasonable use of the parcel of land, building or structure;
6. Granting the variance will be consistent with the purposes, goals, objectives, and policies of the comprehensive plan and this code; and
7. Granting 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.

NOW, THEREFORE, BE IT RESOLVED BY THE ZONING COMMISSION OF PALM BEACH COUNTY, FLORIDA, that Zoning Application ZV/CA2007-1801, the application of Jomar Florida Enterprises, LLC, by Land Design South, Inc., agent, for a Type II Variance to allow a reduction of lot size, lot depth, front setback, number of queuing spaces, right-of-way buffer, and elimination of foundation planting, 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 July 3, 2008, subject to the conditions of approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Kaplan moved for the approval of the Resolution.

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

Frank A. Barbieri, Jr., Chair	Aye
William Anderson, Vice Chair	Aye
Allan Kaplan	Aye
Sherry Hyman	Aye
Al Zucaro	Aye
Joanne Davis	Aye
Alex Brumfield III	Aye

The Chair thereupon declared that this resolution shall not become effective until the approval of Zoning Application CA2007-1801.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BY ITS ZONING COMMISSIONERS

BY: 
COUNTY ATTORNEY

BY: 
CHAIR

EXHIBIT A

LEGAL DESCRIPTION

Beginning at the Southeast corner of Tract 2, Block 3, Subdivision of Section 12, Township 44 South, Range 42 East, PALM BEACH PLANTATIONS, as recorded in Plat Book 10, Page 20, of Palm Beach County Public Records, which point is the intersection of the center line of Military Trail and Forest Hill Boulevard, thence Westerly along the South line of said Tract 2 and the center line of Forest Hill Boulevard a distance of 203.06 feet; thence Northerly and parallel to the center line of Military Trail a distance of 203.06 feet; thence Easterly and parallel to the center line of Forest Hill Boulevard a distance of 203.06 feet to the centerline of Military Trail; thence Southerly along the center line of Military Trail, a distance of 203.06 feet to the Point of Beginning, LESS the Right of Way of Military Trail over the Easterly 53.06 feet thereof and Less the Right of Way of Forest Hill Boulevard over the Southerly 53.06 feet thereof; and LESS the Right of Way to Palm Beach County, dated November 12, 1980 in Official Records Book 3402, Page 1137, Public Records of Palm Beach County, Florida.

LESS AND EXCEPT all that certain land situate in Palm Beach County, Florida to wit:

Being a parcel of land lying in Tract 2, Block 3, PALM BEACH PLANTATIONS, as recorded in Plat Book 10, Page 20, of the Public Records of Palm Beach County, Florida, and being more particularly described as follows:

Commencing at the intersection of the center line of Military Trail (S.R. 809) and Forest Hill Boulevard (Southeast corner of Tract 2, Block 3); thence North 01°30'20" West (assumed bearing) along the centerline of said Military Trail (a 106' Right of Way) as recorded in Road Plat Book 3, Page 74, of the Public Records of said Palm Beach County, a distance of 203.07 feet; thence North 88°46'02" West, a distance of 53.06 feet to a point of intersection with the West Right of Way line of said Military Trail, said point being the Point of Beginning of this description; thence South 01°30'20" East along said West Right of Way line, a distance of 116.76 feet; thence South 44°51'49" West, a distance of 36.20 feet to a point of intersection with the North Right of Way line of said Forest Hill Boulevard (a 120 foot Right of Way); thence North 88°46'02" West along said North Right of Way line, a distance of 7.00 feet; thence North 44°51'49" East, a distance of 36.20 feet; thence North 01°30'20" West along a line that is 7.00 feet West of and parallel with the West Right of Way line of said Military Trail, a distance of 116.77 feet; thence South 88°46'02" East, a distance of 7.01 feet to the Point of Beginning.

EXHIBIT B
VICINITY SKETCH

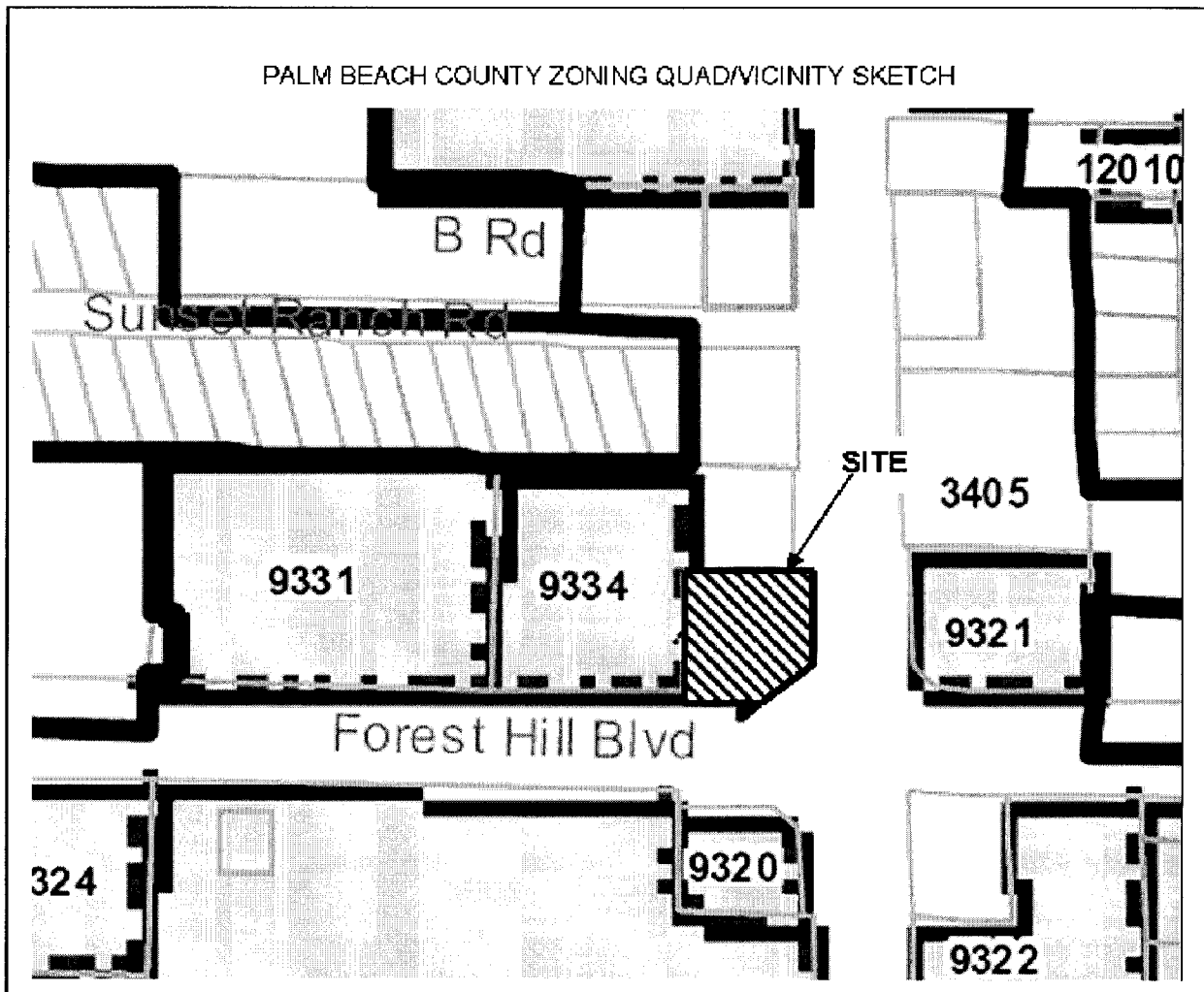


EXHIBIT C

CONDITIONS OF APPROVAL

VARIANCE

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

COMPLIANCE

1. In granting this approval, the Zoning Commission relied upon the oral and written representations of the petitioner 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; 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 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 Conditional Use, Type II Variance, 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.

Departmental administrative actions made pursuant to this condition may be appealed as provided in the Unified Land Development Code (ULDC), as amended. Appeals of any revocation of a Conditional Use, Type II Variance, Development Order Amendment or other actions based on a Zoning Commission decision shall be by petition for writ of certiorari to the Circuit Court, Appellate Division, 15th Judicial Circuit of Florida. (ONGOING: MONITORING - Zoning)

EXHIBIT D
REQUEST

APPLICATION NO.	CODE SECTION	REQUIRED	PROPOSED	VARIANCE
ZV/CA-2007-1801 1747 South Military	Variance 1: 3.D.1.A, Property Development Regulations CG Zoning District Minimum Lot Size	1 acre	0.46 acre	0.54 acre
	Variance 2: 3.D.1.A, Property Development Regulations CG Zoning District Minimum Lot Depth	200 feet	142.99 feet	57.01 feet
	Variance 3: 3.D.1.A, Property Development Regulations CG Zoning District Minimum Front Setback	50 feet	10 feet	40 feet
	Variance 4: 6.A.1.D. Minimum Queuing Standards for a Drive-Thru Restaurant	7 spaces	6 spaces	1 space
	Variance 5 (Existing Building only): 7.C.3-1 Minimum Tier Requirements Foundation Planting – 5 feet wide Front Facade and 8 feet wide Side Facade	40 percent of Front and Side Facades	No foundation plantings	Eliminate foundation plantings
	Variance 6: 7.F.7.A-5 Width of ROW Buffer when the Ultimate ROW is Greater than 100 feet	20 feet	13.5 feet	6.5 feet
SITUS ADDRESS:	Vacant			
OWNER NAME & ADDRESS:	Jomar Florida Enterprises, LLC 220 Division St Kingston PA 18704			
PCN:	00-42-44-12-00-000-7180			
ZONING DISTRICT:	CG			
BCC DISTRICT:	02			
PROJECT MGR.:	Carol Glasser, Site Planner II			
LAND USE:	CH/8	S/T/R: 12-44-42		
CONTROL #:	2007-0407			
LOT AREA:	0.46 acres +/-			
APPLICANT REQUEST:	To allow a reduction of lot size, lot depth, front setback, number of queuing spaces, right-of-way buffer, and elimination of foundation planting.			