

**PALM BEACH COUNTY
PLANNING, ZONING AND BUILDING DEPARTMENT
ZONING DIVISION**



Application No.: ZV/ABN/CA-2011-02630
Control No.: 1981-00010
Applicant: Francalby Corp
Owners: Francalby Corp
Agent: Urban Design Kilday Studios - Joni Brinkman
Telephone No.: (561) 689-5522
Project Manager: Carol Glasser, Site Planner II

Location: Approximately 1,000 feet west of I-95 on the north side of Hypoluxo Road (Hypoluxo Convenience with Gas Sales)

TITLE: a Type II Variance **REQUEST:** to allow an easement overlap of an incompatibility and compatibility landscape buffers **TITLE:** a Development Order Abandonment **REQUEST:** to abandon the Special Exception approved under Resolution R-81-216 and R-99-984 **TITLE:** a Class A Conditional Use **REQUEST:** to allow a Convenience Store with Gas Sales

APPLICATION SUMMARY: Proposed is a Class A Conditional Use to allow a Convenience Store with Gas Sales for the Hypoluxo Convenience with gas sales development. The 1.62-acre site was originally approved by the Board of County Commissioners (BCC) on January 29, 1981 to allow a Special Exception for a Gasoline Service Station. The site is currently vacant as the structures were demolished due to hurricane damage.

The applicant requests a Development Order Abandonment of Resolution R-81-216 and R-99-984 to abandon the Special Exception for a Gasoline Service Station in order to construct a 4,999-square foot convenience store with 6 gasoline pumps (12 fueling stations). The applicant is also requesting 3 Type II Variances to allow an easement overlap of the landscape buffers along the north property line and portions of the east and west property lines. The Preliminary Site Plan indicates 25 parking spaces. Two access points are proposed from the I-95 frontage road right-of-way adjacent to Hypoluxo Road. The access point for the Lake Worth Substation ingress/egress easement will remain.

This application is subject to a concurrent application, SCA-2012-007, requesting to change the Future Land Use (FLU) designation of the subject site from Commercial Low with an underlying 3 units per acre (CL/3) to Commercial High with an underlying 3 units per acre (CH/3).

ISSUES SUMMARY:

o Project History

On January 29, 1981, the BCC approved Resolution R-81-216 for a Special Exception to allow a Gasoline Service Station.

On May 14, 1987, the Board of Adjustment approved variances from setbacks (north and west property lines), parking requirements, and to eliminate the landscape buffer on the north property line. The Final Site Plan was approved on August 10, 1987 as Exhibit 12 for development in 2 phases.

Phase 1 on the western portion of the site allowed a 920-square foot convenience store with 5 pumps and 5-UHaul parking spaces in the as Phase 2 proposed modifications to existing office buildings on the eastern portion of the site.

On July 21, 1993, the Development Review Committee approved Exhibits 25, 26, 27, and 28 to allow an expansion from 920 square feet to 2,760 square feet for the Convenience Store and 2nd floor offices and a new 6,600-square foot retail and office building for a total of 10,280 square feet.

On August 24, 1995, the BCC *denied* a petition via R-95-1123, which had requested to combine the subject site with the parcels to the west and rezone to a Multiple Use Planned Development.

On August 14, 1997, the Monitoring Section revoked the Development Order approved on July 21, 1993, for the expansion of the Convenience store and additional retail and office buildings for failure to commence development. Exhibits 25, 26, 27, and 28 were voided with the Valid Development Permit Final Site Plan reverting back to Exhibit 12.

On May 27, 1999, the BCC approved Resolution R-99-984 to amend Condition of Approval number 3 of Resolution R-81-216 to reduce the west buffer to 5 feet in width and delete the requirement for a wall pursuant to a settlement agreement.

Operation of the Gasoline Service Station ceased in 2005 due to hurricane damage. The site is currently vacant.

o Consistency with Comprehensive Plan

The Planning Division has found that the request is generally consistent with the High Ridge Road Corridor Study and the proposed CH/3 FLU designation of the Comprehensive Plan. See the Staff Review and Analysis section for additional Planning Division comments.

o Compatibility with Surrounding Land Uses

NORTH:

FLU Designation: Low Residential (LR-3)
Zoning District: Single-Family Residential (RS)
Supporting: Electrical Switching Station (Lake Worth Utilities Authority, Control No 73-104)

SOUTH:

FLU Designation: Commercial Low, with an underlying Medium Residential, 5 units per acre (CL/5)
Zoning District: RS
Supporting: Place of Worship (Grace Presbyterian Church, No Control)

EAST:

FLU Designation: Industrial (IND)
Zoning District: Light Industrial (IL)
Supporting: Self Storage/Warehouse (Public Storage, Control No. 99-095)

WEST:

FLU Designation: Commercial Low, with an underlying Low Residential, 3 units per acre (CL/3)
Zoning District: Multiple Use Planned Development (MUPD)
Supporting: Vacant (Hypoluxo Shoppes, Control No. 08-0243)

The BCC approved a Special Exception to allow a Gasoline Service Station for the subject site on January 29, 1981. The development pattern for this vicinity is evident in the 1985 aerials (Figure 5). The Gasoline Service Station, electrical switching station to the north, residential to the northwest, Place of Worship to the south, industrial uses to the east, and I-95 all existed In 1985. The property to the west of the subject site remains vacant.

The subject site is also diagonally opposite a single family residential lot to the northwest, which has a LR-3 FLU designation and a RS Zoning District. Landscape Conditions 3 and 4 (Exhibit C-2) are recommended to ensure adequate buffering from the Convenience Store with Gas Sales use is provided. The adequate buffering standard for the Conditional Use is reviewed in the Findings section.

o Traffic

See Staff Review and Analysis section for additional information from the Land Development and Traffic Divisions.

o Landscape/Buffering

Staff is recommending Conditions of Approval to ensure appropriate buffering of the proposed use to the residential uses at the northwest corner of the site. Staff is recommending a Type 2 Incompatibility buffer along the western 100 feet of the north property line (Exhibit C-2, Landscape - Perimeter 4) and that the interior trees and shrub plantings be maximized in the easement area between the building and the northwest corner of the site (Exhibit C-2, Landscape - Interior 3). The applicant has obtained preliminary approval from FPL to plant within the easement. A 5-foot wide compatibility buffer is provided along the east and west property lines and a 20-foot wide right-of-way buffer along the I-95 frontage road.

o Signs

An approved Billboard Sign (B-1997-024259-0000) exists on the site. Staff is recommending a Condition of Approval to limit the development to 1 ground mounted freestanding sign with a maximum of 150 square feet of sign face area and a maximum of 15 feet in height. The I-95 right-of-way frontage road separates the site from Hypoluxo Road by approximately 55 feet at the proposed location for the freestanding sign. Canopy signage, addressing signage, and any proposed wall signage and/or directional signage shall comply with Article 8 Signage and Sign Conditions 2 and 3 (Exhibit C-2) prior to approval of the Final Master Sign Plan.

o Architectural Review

The initial elevations for the proposed Convenience Store with Gas Canopy have not been submitted by the applicant. The proposed development is subject to Article 5.C Architectural Guidelines. Staff is recommending that at time of submittal for final Development Review Officer (DRO) approval, the architectural elevations for the proposed building be submitted simultaneously with the site plan for final architectural review and approval. Development shall be consistent with the approved architectural elevations, the DRO approved site plan, all applicable conditions of approval, and all ULDC requirements (See Architecture Condition 1). Staff has also added additional Conditions of Approval to address visual impact of the proposed use to adjacent properties and from the right of way.

o Variance

ULDC	REQUIRED	PROPOSED	VARIANCE
Art. 7.D.12.	Five (5) foot maximum overlap of an easement by a landscape buffer, with a minimum of 5 foot clear for planting.	100% easement overlap of the landscape buffer along the North property line with no clear area for planting.	10 feet
Art. 7.D.12.	Five (5) foot maximum overlap of an easement by a landscape buffer, with a minimum of 5 foot clear for planting.	100% easement overlap of the landscape buffer for an 18 foot section along the East property line, with no clear area for planting.	5 feet

Art. 7.D.12.	Five (5) foot maximum overlap of an easement by a landscape buffer, with a minimum of 5 foot clear for planting.	100% easement overlap of the landscape buffer for an 18 foot section along the West property line, with no clear area for planting.	5 feet
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Art. 7.D.12 of the Unified Land Development Code (ULDC) allows a maximum easement overlap of 5 feet provided a minimum of 5 clear feet for planting is provided. The applicant is requesting Type II Variances from this requirement along the north and portions of the east and west property lines.

TABULAR DATA

	EXISTING	PROPOSED
Property Control Number(s) (PCN)	00-43-45-04-00-000-7340 00-43-45-04-00-000-7350	New PCN Must be combined into a single lot of record per Condition of Approval (Exhibit C-2, Engineering 4)
Land Use Designation:	Commercial Low with an underlying Low Residential, 3 units per acre (CL/3)	Commercial High with an underlying Low Residential, 3 units per acre (CH/3) (Pursuant to concurrent application SCA-2012-007)
Zoning District:	General Commercial (CG)	Same
Tier:	Urban Suburban	Same
Use:	Vacant (hurricane-damaged former Gasoline Service Station structures were demolished)	Convenience Store with Gas Sales
Acreage:	1.62 acres	Same
Intensity:	N/A	4,999 square feet
Parking:	N/A	25 spaces
Access:	1 access point from I-95 right-of-way frontage road adjacent to Hypoluxo Road plus 1 access point for ingress/egress to Lake Worth Substation	2 access points from I-95 right-of-way frontage road adjacent to Hypoluxo Road. Existing access point for Lake Worth Substation ingress/egress will remain.

PUBLIC COMMENT SUMMARY: At the time of publication, staff had received 1 contact from the public requesting additional information regarding this project.

RECOMMENDATION: Staff recommends approval of the Type II Variance request subject to 5 Conditions of Approval as indicated in Exhibit C-1; approval of the Development Order Abandonment; and, approval of the Class A Conditional Use subject to 21 Conditions of Approval as indicated in Exhibit C-2.

MOTION: To adopt a Resolution approving a Type II Variance to allow easement overlap of an incompatibility and compatibility landscape buffers subject to the Conditions of Approval as indicated in Exhibit C-1

MOTION: To recommend approval of a Development Order Abandonment to abandon the Special Exception approved under Resolution R-81-216 and R-99-984.

MOTION: To recommend approval of a Class A Conditional Use to allow a Convenience Store with Gas Sales subject to the Conditions of Approval as indicated in Exhibit C-2.

PALM BEACH COUNTY PLANNING DIVISION SITE LOCATION AND LAND USE

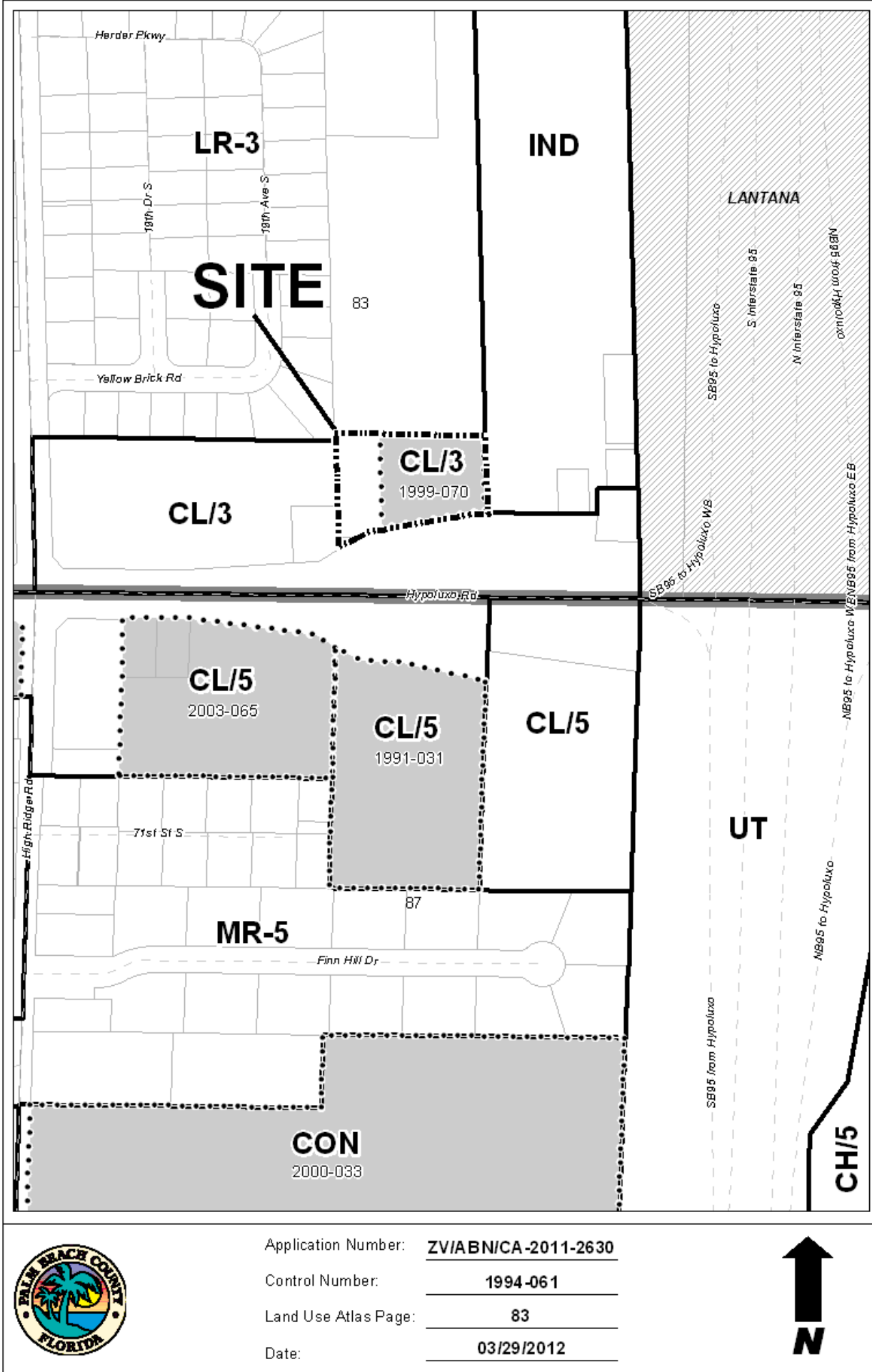


Figure 1 Land Use Map

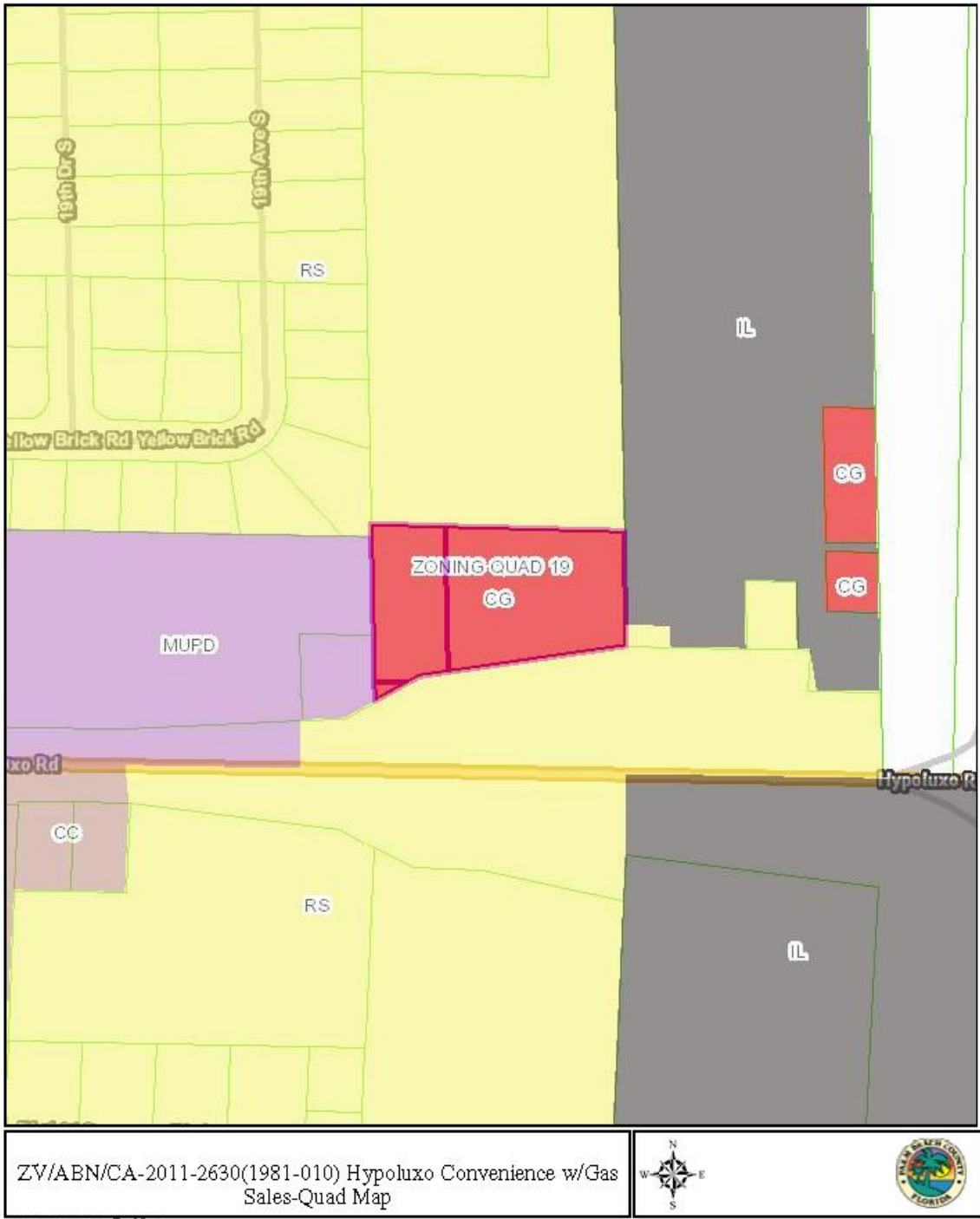


Figure 3 Zoning Map



Figure 3 Aerial

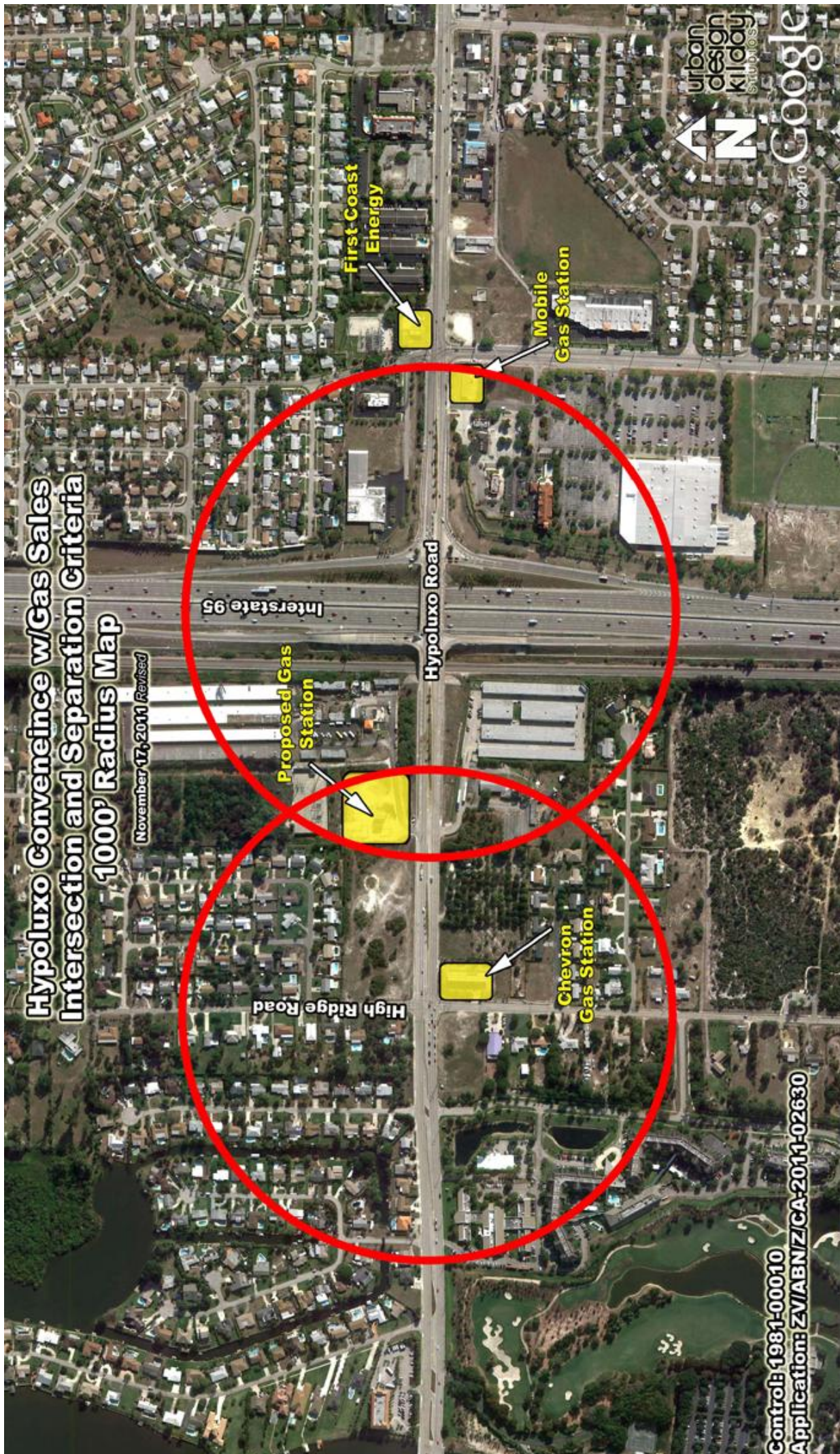


Figure 4 Gas Sales Map and Intersection Criteria, Limitation on the number of uses within 1,000-feet the intersections

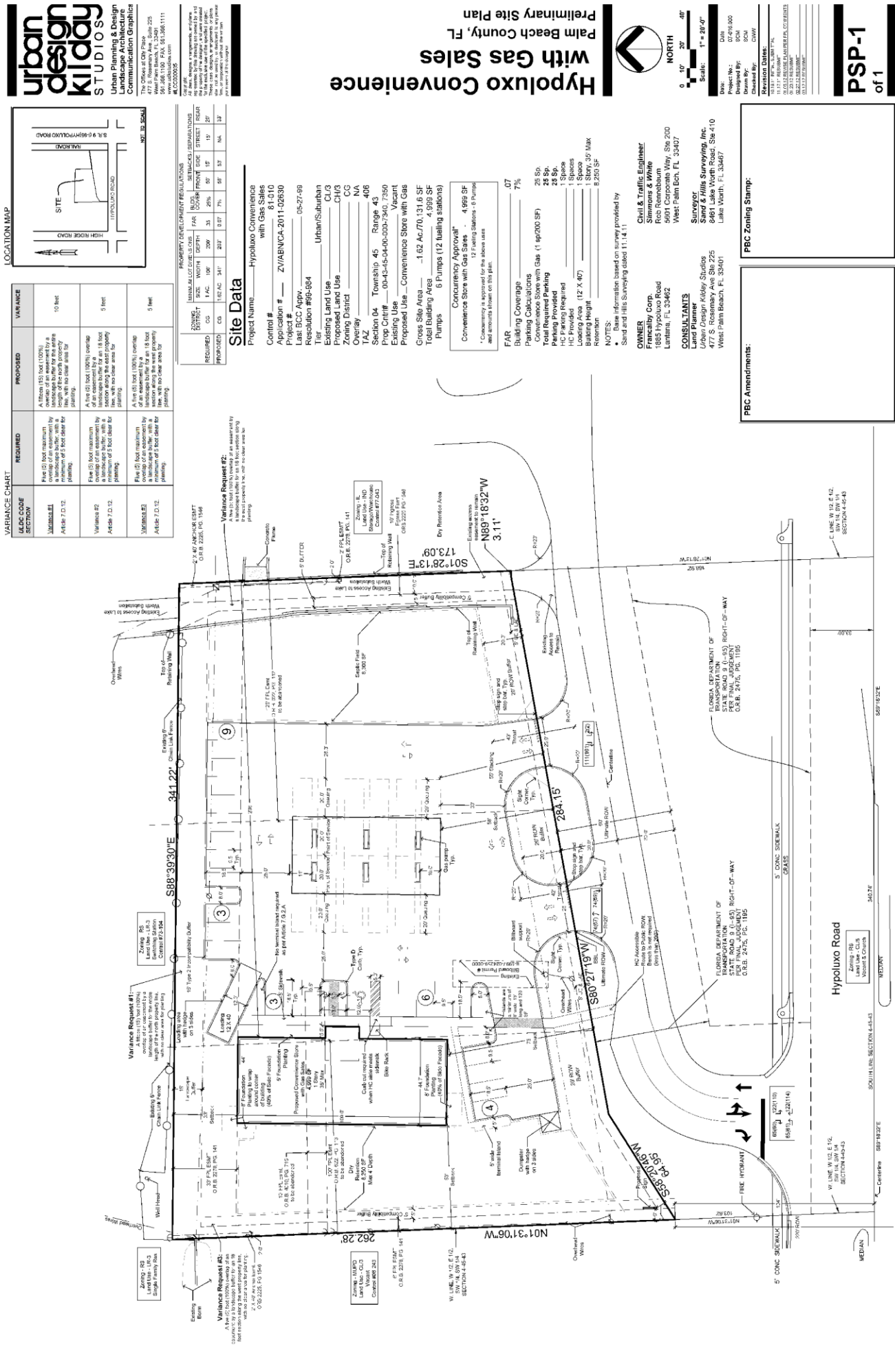


Figure 5, 1985 Aerials

Figure 6 Preliminary Site Plan dated March 15, 2012

ZC
 Application No. ZV/ABN/CA-2011-02630
 Control No. 1981-00010
 Project No. 05810-000

May 3, 2012
 BCC District 03



VARIANCE CHART	REQUIRED	PROPOSED	VARIANCE
U/LDC CODE SECTION			
U/LDC CODE SECTION	Five (5) foot maximum coverage of an easement by a building or structure with a minimum of 5 foot clear for planting.	A fifteen (15) foot (100%) coverage of an easement by a building or structure with a minimum of 5 foot clear for planting.	10 feet
U/LDC CODE SECTION	Five (5) foot maximum coverage of an easement by a building or structure with a minimum of 5 foot clear for planting.	A five (5) foot (100%) coverage of an easement by a building or structure with a minimum of 5 foot clear for planting.	5 feet
U/LDC CODE SECTION	Five (5) foot maximum coverage of an easement by a building or structure with a minimum of 5 foot clear for planting.	A five (5) foot (100%) coverage of an easement by a building or structure with a minimum of 5 foot clear for planting.	5 feet

PROPERTY DEVELOPMENT REGULATIONS	MINIMUM	REQUIRED	PROPOSED	MAXIMUM
SETBACK	5 FT	5 FT	5 FT	5 FT
HEIGHT	35 FT	35 FT	35 FT	35 FT
AREA	100%	100%	100%	100%
COVERAGE	100%	100%	100%	100%
PLANTING	5 FT	5 FT	5 FT	5 FT

Site Data
 Project Name: Hypoluxo Convenience with Gas Sales
 Control #: 81-010
 Application #: ZV/ABN/CA-2011-02630
 Last BCC App: 05-27-09
 Resolution #98-984
 Tier: Urban/Suburban
 Existing Land Use: CH/3
 Proposed Land Use: CH/3
 Zoning District: CC
 Land Use: CC
 Section 04: Township 45 Range 43
 Prop Cont#: 00-43-45-04-000-2340, 7350
 Existing Use: Vacant
 Proposed Use: Convenience Store with Gas Pumps
 Gross Site Area: 1.82 Ac./70,131.6 SF
 Total Building Area: 4,939 SF
 6 Pumps (12 fueling stations)

Concurrence Approval
 Convenience Store with Gas Sales: 4,939 SF
 12 Fueling Stations - 6 Pumps
 and amounts shown on this plan.

Building Coverage 07 %
Parking Calculations 25 Sp.
Convenience Store with Gas (1 spr/200 SF) 23 Sp.
Total Required Parking 1 Space
HC Parking Required 1 Space
HC Provided 1 Space
Loading Area (12' X 40') 1 Space
Building Height 35' Max
Setback 5, 20, 30' Max

OWNER
 Franchisa Corp.
 1885 Hypoluxo Road
 Lantana, FL 33462

CONSULTANTS
 Land Planner
 Urban Design Kilday Studios
 Sand & Hills Surveying, Inc.
 477 S. Rosemary Ave. Ste 225
 West Palm Beach, FL 33401

City & Traffic Engineer
 Simmons & White
 Rob Rembaum
 5901 Corporate Way, Ste 200
 West Palm Bch, FL 33407

NOTES:
 • Base information based on survey provided by Sand and Hills Surveying dated 11.14.11

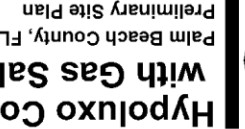
PEC Amendments:

PEC Zoning Stamp:



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 M: 202.000.8200
 www.urbandesignkilday.com

Hypoluxo Convenience with Gas Sales
 Preliminary Site Plan
 Palm Beach County, FL



Scale: 1" = 20'-0"
 Date: 05/03/12
 Drawn By: SCW
 Checked By: CMW

PSP-1
 of 1

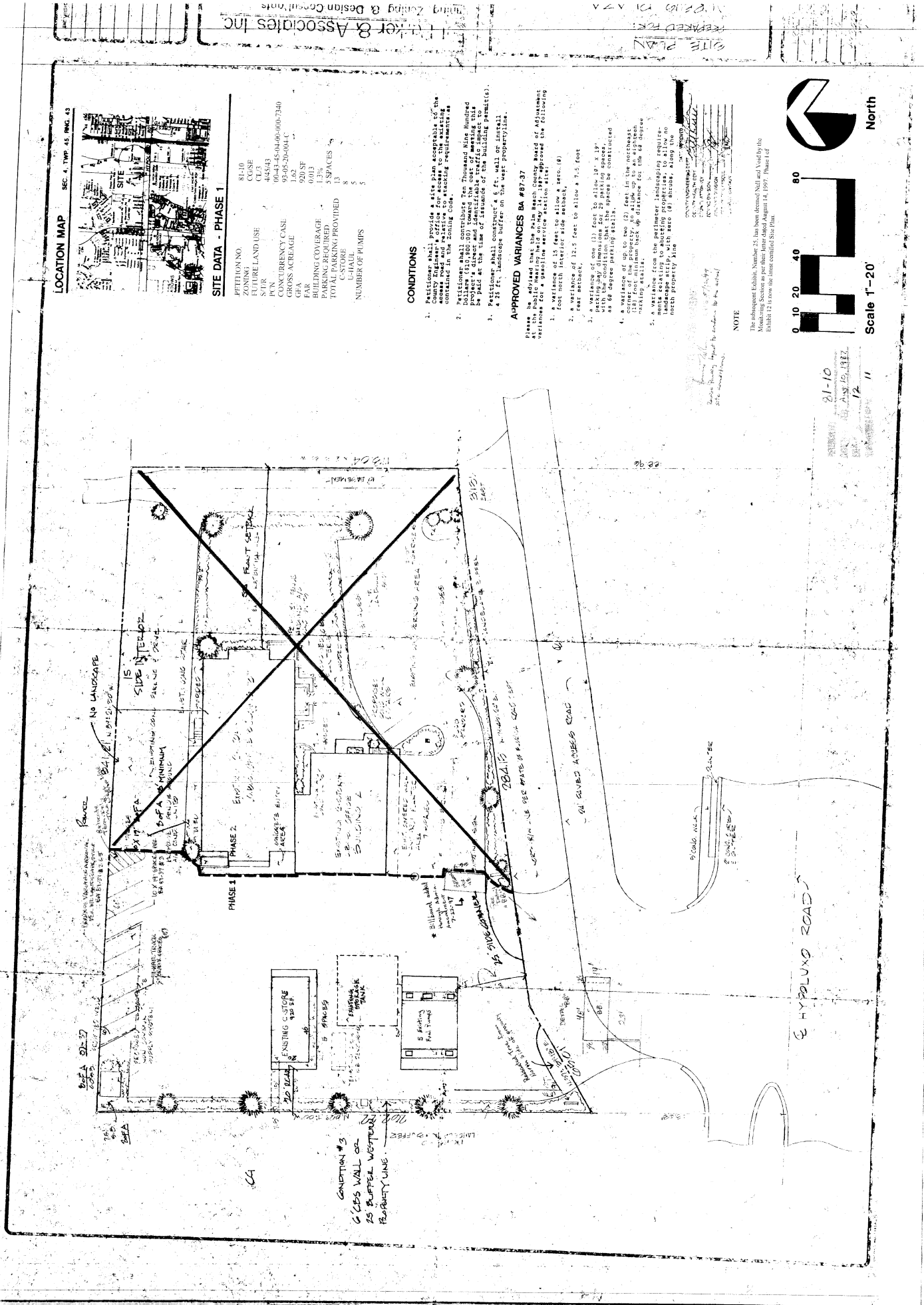


Figure 8 Previously Approved Final Site Plan. Limited to Phase 1 of Exhibit 12 dated August 10, 1987 per Monitoring Letter dated August 14, 1997.

STAFF REVIEW AND ANALYSIS

PLANNING DIVISION COMMENTS:

FUTURE LAND USE (FLU) PLAN DESIGNATION: Commercial Low with an underlying Low Residential 3 units per acre (CL/3)

PROPOSED FUTURE LAND USE (FLU) PLAN DESIGNATION: Commercial High with an underlying Low Residential 3 units per acre (CH/3)

TIER: The subject site is in the Urban/Suburban Tier.

FUTURE ANNEXATION AREAS: Within the future annexation area of the City of Lantana and City of Lake Worth.

INTERGOVERNMENTAL COORDINATION: Within one mile of the City of Lantana

CONSISTENCY WITH FUTURE LAND USE (FLU) PLAN DESIGNATION: The Planning Division has reviewed the requests for 3 Type II Variances to allow for the overlap of the Landscape and an easement; a Development Order Abandonment to abandon prior approvals and a Class "A" Conditional Use to allow for the construction of a Convenience Store with Gas sales.

The current Future Land Use Plan designation for the site is Commercial Low (CL) with underlying Low Residential/three (3) dwelling units per acre (CL/3). The current zoning of the property is General Commercial (CG). While the proposed use is consistent with both the existing zoning and land use designations, Article 4.B.1.A.37 requires that this use must comply with the Major Intersection Criteria in Article 5.E.1 within a CL Land Use Designation.

The applicants Justification Statement, Dated February 27, 2012, offers the following synopsis for the subject site and the request.

"Historically this site has been zoned the CG standard district and, up until 2005, has had in operation the use of a gasoline service station/convenience store with gas sales since 1981, prior to PBC designating the site as Commercial Low. At the time of approval the category for convenient store with gas sales was not established and instead the use was categorized as "Gas Service Station." If not for the 2004-1005 hurricane season, the use of convenience store with gas sales would continue to be in operation today. Please note that the previous approval for the Special Exception was never abandoned and the owner has always fully intended to reinstitute the use. The redesign and rebuilding of the site results in a logical, orderly, and timely development pattern for this area. The proposed redevelopment of the convenience store with gas sales will provide services to both the residential neighborhoods in the immediate area as well as the needs of residents and business owners within the region."

The site was the subject of a previous County initiated Large Scale Land Use Amendment known as Cross Hatching Removal (LGA 1999-CHX, ORD 1999-070). The amendment altered the land use from CX/3 to CL/3 and contained no conditions.

The subject site has submitted a concurrent Small Scale Land Use Amendment (SCA-2012-007) known as Hypoluxo Convenience with Gas Sales. The request is to amend the land use from Commercial Low with an underlying 3 units per acre to Commercial High with an underlying 3 units per acre (CH/3). The concurrent FLUA amendment is scheduled to be heard by the Local Planning Agency (LPA) at a public hearing on May 11, 2012.

A maximum Floor Area Ratio (FAR) of .35 (w/o PDD) is allowed with the proposed CH/3 FLU designation in the Urban/Suburban Tier ($1.62 \text{ ac} \times 43,560 \times .35 = 24,698.52$ square feet maximum). Currently the site holds a CL FLUA designation and the maximum Floor Area Ratio (FAR) of .20 (w/o PDD) is allowed for a project with a CL/3 FLU designation in the Urban/Suburban Tier ($1.62 \text{ ac} \times 43,560 \times .20 = 14,113.44$ square feet maximum). The request for 4,999 square feet equates an FAR of approximately 0.07 ($4,999/70,567.2$ square feet or $1.62 \text{ acres} = 0.07$).

The County Archaeologist has reviewed the proposed project and determined that the parcel is within an Archaeological Conservation Area on the map of known archaeological sites. It is located within the "High Ridge Road Archaeological Conservation Zone." Accordingly, the Planning Division is recommending Conditions of Approval that require a Certificate to Dig prior to any ground disturbing activities, and that all activities on the parcel cease until the County Archaeologist can be notified and consulted with to determine the significance of any artifacts, should any be unearthed.

SPECIAL OVERLAY DISTRICT/NEIGHBORHOOD PLAN/PLANNING STUDY AREA:

FLUE Policy 2.1-k states "Palm Beach County shall utilize a series of overlays to implement more focused policies that address specific issues within unique identified areas as depicted on the Special Planning Areas Map in the Map Series."

FLUE Policy 4.1-c states "The County shall consider the objectives and recommendations of all Community and Neighborhood Plans, including Planning Area Special Studies, recognized by the Board of County Commissioners, prior to the extension of utilities or services, approval of a land use amendment, or issuance of a development order for a rezoning, conditional use or Development Review Officer approval....."

The subject site is within the High Ridge Road Corridor Study Area 2. The High Ridge Road Corridor Study was presented to the BCC during a workshop in 1997. The study describes the Commercial Low (CL) Land Use designation as the most characteristic non residential land use for the area and prefers this designation for the undeveloped parcels within the study area. The following recommendations are for this specific area:

1. Favor a CL determination for all commercial properties in this area, absent any outcomes to the contrary of the ongoing legal proceedings on the north sites.
2. Encourage unified development of parcels N-1 & N-2, also considering expanding that aggregate to include the existing service station under the same ownership.
3. Limit or eliminate, if possible, any access on to High Ridge Road for all the sites.
4. Require an appropriate landscape buffer for all new development, consistent with the existing landscape pattern of the corridor.

The subject parcel is identified in the plan as a service station. The subject parcel is to the east of those parcels identified as N1 and N2. The subject parcel and the parcels to the west are not under the same ownership and the subject request does not include those parcels to the west. Therefore, the recommendation to aggregate all of the parcels cannot be achieved at this time with the subject request.

The sole access for the subject request is directly from Hypoluxo Road and the subject site is three parcels to the east of High Ridge Road with no proposed access to High Ridge Road. Landscaping will be addressed via the ULDC. The Study Area has no prescribed plan for characterization of existing landscaping; therefore, the ULDC will be the more restrictive and instructive for prescribing a landscape palette.

FINDINGS: The request is generally consistent with the High Ridge Road Corridor Study and the proposed CH/3 FLU designation of the Palm Beach County Comprehensive Plan.

ENGINEERING COMMENTS:

REQUIRED ENGINEERING RELATED PERMITS

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.

The property owner shall obtain a Turnout Permit from the Palm Beach County Engineering Department, Permit Section, for modifications to access onto Hypoluxo Road and a permit from the Florida Department of Transportation for access onto the frontage road.

TRAFFIC IMPACTS

The Property Owner has estimated the build-out of the project to be December 31, 2016. Net new traffic expected from the proposed project is 1925 trips per day, 148 trips in the PM peak hour. Additional traffic is subject to review for compliance with the Traffic Performance Standard.

The following roadway improvements are required for compliance with the Traffic Performance Standards:

a. Intersection modifications to the Hypoluxo Road/I-95 interchange. Construction bids for this improvement were opened in March 2012 and the contract is expected to be awarded imminently.

ADJACENT ROADWAY LEVEL OF SERVICE (PM PEAK westbound)

Segment: Hypoluxo Road from High Ridge Rd. to I-95

Existing count: 2129

Background growth: 104

Project Trips: 52

Total Traffic: 2285

Present laneage: 6LD

LOS "D" capacity: 2680

Projected level of service: D

PALM BEACH COUNTY HEALTH DEPARTMENT:

No Staff Review Analysis is needed for this request.

ENVIRONMENTAL RESOURCE MANAGEMENT COMMENTS:

VEGETATION PROTECTION: The has been previously cleared of significant native vegetation.

WELLFIELD PROTECTION ZONE: The property is not located with a Wellfield Protection Zone.

IRRIGATION CONSERVATION CONCERNS AND SURFACE WATER: All new installations of automatic irrigation systems shall be equipped with a water sensing device that will automatically discontinue irrigation during periods of rainfall pursuant to the Water and Irrigation Conservation Ordinance No. 93 3. Any non stormwater discharge or the maintenance or use of a connection that results in a non stormwater discharge to the stormwater system is prohibited pursuant to Palm Beach County Stormwater Pollution Prevention Ordinance No. 93-15.

ENVIRONMENTAL IMPACTS: There are no significant environmental issues associated with this application beyond compliance with ULDC requirements.

OTHER:

FIRE PROTECTION: Palm Beach County Department of Fire Rescue.

SCHOOL IMPACTS: No Staff Review Analysis is needed for this request.

PARKS AND RECREATION: No Staff Review Analysis is needed for this request.

CONCURRENCY: Concurrency has been approved for a 4,999-square foot Convenience Store with Gas Sales with 6 pumps and 12 fueling stations.

WATER/SEWER PROVIDER: City of Lake Worth for water. Sewer is Septic System.

FINDING: The proposed Conditional Use complies with Article 2.F of the ULDC, Concurrency (Adequate Public Facility Standards).

FINDINGS:

Type II Concurrent Variance Standards:

The Zoning Commission shall consider and find that all 7 criteria pursuant to Article 2.B.-3.E and listed below have been satisfied by the applicant prior to making a motion for approval, of a zoning variance:

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:**

V.1, V.2, V.3: Art. 7.D.12 Landscape in Easements – YES:

The applicant is requesting Type II variances from Art. 7.D.12 Landscape in Easements for the north property line and the northern portions of the east and west property lines. The 3 variances arise from the same issue of existing FPL easements on the northern portion of the site and will be discussed together although enumerated separately in the Variance Chart in the Issues Summary section of the report.

A 33-foot wide FPL easement (ORB 2278, PG 141) encumbers the northern portion of the site. The applicant has preliminary approval from the easement holder for a conceptual planting program within the easement. The trees are proposed with a mature height of 15 feet using FPL's "Right Tree Right Place" guidelines.

Art. 7.D.12 allows easement overlap with required landscape buffer provided that a minimum of 5-feet remains clear of the easement for planting.

2. **Special circumstances and conditions do not result from the actions of the applicant:**

V.1, V.2, V.3: Art. 7.D.12 Landscape in Easements – YES:

The subject site is significantly encumbered by easements. The easement recorded in ORB 2278, PG 141 on March 6 1974 released the previous easement recorded on March 29, 1961 in ORB 622 PG 115. This easement relates to a 33-foot wide easement for FPL along the north property line. This circumstance does 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, structures or buildings in the same zoning district:**

V.1, V.2, V.3: Art. 7.D.12 Landscape in Easements – YES:

The granting of the variances will not confer a special privilege to the Applicant denied other parcels in the same district. Other developments within the CG Zoning District with similar circumstances and upon providing satisfactory justification to the variance criteria may be granted a variance from Art. 7.D.12 Landscape in Easements.

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:**

V.1, V.2, V.3: Art. 7.D.12 Landscape in Easements – YES:

Literal interpretation would not allow redevelopment of the site as a Convenience Store with Gas Sales in accordance with current Code requirements because the adequate buffering must be provided between the residential uses at the northwest corner of the site and the proposed use. The applicant has obtained preliminary approval of the easement holder to plant trees and shrubs within the easement area to appropriately buffer the proposed use. Staff is recommending a Condition of Approval to require a Type 2 Incompatibility buffer along the western 100 feet of the north property line. An additional 10 feet of setback would be required to provide this buffer if variance approval is not granted. An undue hardship would result without the grant of the variance.

5. **Grant of variance is the minimum variance that will make possible the reasonable use of the parcel of land, building or structure:**

V.1, V.2, V.3: Art. 7.D.12 Landscape in Easements – YES:

The granting of the variance is the minimum necessary to make reasonable use of the site to reinstitute the previously approved use for the property. The site has severe site design constraints associated with providing the buffers outside of the easement areas. Approval of this variance is necessary to meet the requirements and goals of the ULDC and to comply with the requirements of FPL and the City of Lake Worth for the overhead transmission lines and adjacent switching station operation.

6. **Grant of the variance will be consistent with the purposes, goals, objectives, and policies of the Comprehensive Plan and this Code:**

V.1, V.2, V.3: Art. 7.D.12 Landscape in Easements – YES:

Grant of the variances will allow the redevelopment of the site consistent with the intent of the CG Zoning District. The CG Zoning District is intended to provide commercial uses that provide a wide range of goods and services, have access from collector or arterial streets, and service a consumer market of at least a 3 mile radius per Art. 3.C.1.G.5. The Planning Division has reviewed the variance request and found the request generally consistent with the High Ridge Road Corridor Study and the proposed CH/3 FLU designation of the Palm Beach County Comprehensive Plan.

7. **Granting the variance will not be injurious to the area involved or otherwise detrimental to the public welfare:**

V.1, V.2, V.3: Art. 7.D.12 Landscape in Easements – YES:

Grant of the variances will not be injurious to the area involved or detrimental to the public welfare. The proposed site design increases the setback of the uses on the site. Previously, the U-Haul truck storage spaces abutted the north property line with no buffering provided. Subject to the approval of the easement holder, the plantings will enhance the proposed development's aesthetic value from the perspective of the adjacent properties and will not cause injury to the surrounding area.

FINDINGS:

Conditional Uses, Requested Uses and Development Order Amendments:

When considering a Development Order application for a Conditional or Requested Use, or a Development Order Amendment, the BCC and ZC shall consider standards 1 – 9 indicated below. A Conditional or Requested Use or Development Order Amendment which fails to meet any of these standards shall be deemed adverse to the public interest and shall not be approved. Staff has reviewed the request for compliance with the standards that are expressly established by Article 2.B.-2.B and provides the following assessment:

1. **Consistency with the Plan** – *The proposed use or amendment is consistent with the purposes, goals, objectives and policies of the Plan, including standards for building and structural intensities and densities, and intensities of use.*

The Planning Division has found the request is generally consistent with the High Ridge Road Corridor Study and the proposed CH/3 FLU designation of the Palm Beach County Comprehensive Plan.

2. **Consistency with the Code** - *The proposed use or amendment complies with all applicable standards and provisions of this Code for use, layout, function, and general development characteristics. The proposed use also complies with all applicable portions of Article 4.B, SUPPLEMENTARY USE STANDARDS.*

The proposed Convenience Store with Gas Sales complies with Art. 4.B.1.A.18.a as follows:

- 1) Adequate ingress/egress have been provided. Two access points are provided from the I-95 frontage road on the north side of Hypoluxo Road. One ingress/egress for the access

easement to the Lake Worth Substation also remains.

- 2) Adequate buffering and setbacks are provided from residential areas. The applicant has conceptual approval from the easement holder to plant within the easement area at the northwest corner of the site, which is contiguous to residential. The perimeter buffer plantings, interior trees and shrubs, and foundation planting area will all be clustered in this area to provide adequate buffering from the residential to the northwest corner of the site.
- 3) Sufficient vehicle stacking, circulation, access, and turning movement area have been provided. All Code requirements for stacking, circulation, access and areas for turning movements have been met or exceeded on the Preliminary Site Plan dated March 15 2012.
- 4) The number of fueling stations is not excessive. The 12 fueling stations indicated on the Preliminary Site Plan are accommodated on the site in accordance with Code requirements and justified as a result of the high traffic count in the vicinity of I-95 and Hypoluxo Road as indicated in the Traffic Statement.
- 5) The number of similar stations in the vicinity is not excessive. The proposed Convenience Store with Gas Sales complies with the Intersection Criteria for both the intersection of I-95 and Hypoluxo Road and the intersection of High Ridge Road and Hypoluxo Road as demonstrated by the dual 1,000-foot radius aerial (Figure 4).

The proposed floor area of 5,000 square feet complies with the maximum floor area allowed of 5,000 square feet.

Per Art. 4.B.1.A.37.c.1), a maximum of 2 auto service stations and convenience stores with gas sales, or any combination thereof, are permitted at an intersection pursuant to Art. 2.E.2.B. The subject site is within 1,000 feet of 2 intersections, Hypoluxo Road and I-95; and, Hypoluxo Road and High Ridge Road. The applicant has submitted an aerial to indicate compliance with the location criteria. (Figure 4, Intersection Criteria Aerial).

The applicant is required to provide evidence of the protection of drinking water sources to the Health Department through the DRO/Building Permit processes.

The site is designed to provide a minimum of 50% of the parking spaces directly adjacent to the building. A collocated restaurant (Type 1 or Type 2) would be permitted by right subject to compliance with the use regulations for the restaurant use. Prior to final approval by the Development Review Officer (DRO), the Site Plan shall be revised to relocate the dumpster a minimum of 50 feet from the front to meet the setbacks in Art. 3.D.1.A Property Development Regulations as required by Art. 5.B.1.A. for Accessory Structures in Nonresidential Districts.

The subject site would not be required to meet Major Intersection Criteria of Art. 5.E.1. contingent upon BCC approval of concurrent application SCA-2011-007 requesting to change the FLU designation from CL/3 to CH/3,

3. **Compatibility with Surrounding Uses** – *The proposed use or amendment is compatible and generally consistent with the uses and character of the land surrounding and in the vicinity of the land proposed for development.*

The subject was a Gasoline Service Station use, which is similar to the current Code classification of Convenience Store with Gas Sales use, until the 2004- 2005 hurricane season permanently damaged the structures. The applicant is proposing to redevelop the site with increased setbacks and buffering from the residential use that is adjacent point-to-point at the northwest corner of the site. The residential uses to the northwest are protected from potential negative impacts through the site design. The proposed use does not create any incompatibility issues with the other adjacent industrial and warehouse, electrical switching station, and other commercial or civic uses.

4. **Design Minimizes Adverse Impact** – *The design of the proposed use minimizes adverse effects, including visual impact and intensity of the proposed use on adjacent lands.*

The dry retention area is proposed on the western portion of the site at the rear of the proposed 4,999-square foot building. The building lies between residential uses to the northwest of the site and the fueling stations. Thus, the building serves to buffer the fueling activity from the residential uses. The building is setback approximately 69 feet from the nearest residential lot at the northwest corner.

5. **Design Minimizes Environmental Impact** – *The proposed use and design minimizes environmental impacts, including, but not limited to, water, air, storm water management, wildlife, vegetation, wetlands and the natural functioning of the environment.*

The has been previously cleared of significant native vegetation and is not located with a Wellfield Protection Zone. A dry retention area (approximately 8,250 square feet) and septic field (approximately 8,300 square feet) are provided in the site design. A Drainage Permit is required prior to Building Permit verifying the provision of storm water management. An Onsite Sewage Treatment and Disposal System (OSTDS) permit is required prior to building permit. (Health Condition 1, Exhibit C-2) The Planning Division is recommending Conditions of Approval regarding archaeological artifacts and the requirement for a Certificate to Dig. (Exhibit C-2)

6. **Development Patterns** – *The proposed use or amendment will result in a logical, orderly and timely development pattern.*

The BCC approved a Special Exception to allow a Gasoline Service Station for the subject site on January 29, 1981. The development pattern for this vicinity is evident in the 1985 aerials (Figure 5). The Gasoline Service Station, electrical switching station to the north, residential to the northwest, Place of Worship to the south, industrial uses to the east, and I-95 all existed in 1985. The property to the west of the subject site is vacant.

Although the structures for the Gasoline Service Station use were demolished subsequent to hurricane damages, the resolutions for the Gasoline Service Station use were never revoked and the owner intended to reinstate the use. The proposed use is a continuation of the established development pattern.

7. **Adequate Public Facilities** – *The extent to which the proposed use complies with Art. 2. F, Concurrency.*

Concurrency has been approved for a 4,999-square foot Convenience Store with Gas Sales with 6 pumps and 12 fueling stations.

8. **Changed Conditions or Circumstances** – *There are demonstrated changed conditions or circumstances that necessitate a modification.*

The applicant is not proposing to reconstruct the former use exactly as indicated on Exhibit 12, which is the controlling Site Plan for Control No. 81-10. Therefore, the applicant must request a concurrent Development Order Abandonment of R-81-216 and R-99-984 to construct a Convenience Store with Gas Sales pursuant to current Code requirements.

The applicant states that, if not for the destruction and damages to this operation as the result of 2004-2005 hurricanes, the convenience store with gas sales would be in operation today and the owner had always fully intended to reinstitute the use. Although the structures for the Gasoline Service Station use were demolished subsequent to hurricane damages, the resolutions for the Gasoline Service Station use were never revoked. The applicant indicates the redevelopment has been delayed as a result of the current economic situation. The applicant indicates circumstances now have changed that redevelopment can move forward. Obtaining the necessary approvals is needed to attract a user to the site.

CONDITIONS OF APPROVAL

EXHIBIT C-1

Type II Variance - Concurrent

VARIANCE

1. This Variance was approved based on the layout of the Preliminary Site Plan dated March 15, 2012. (ONGOING: CODE ENF - Zoning)

2. The Development Order for this variance shall be tied to the Time Limitations of the Development Order for ZV/ABN/CA-2011-2630. (ONGOING: MONITORING - Zoning)

3. At time of application for a Building Permit, the Property Owner shall provide a copy of this Variance approval along with copies of the Final Site Plan to the Building Division. (BLDG PERMIT:ZONING-Landscape)

4. 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)

5. 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 C-2
Conditional Use Class A

ALL PETITIONS

1. The approved Preliminary Site Plan is dated March 15, 2012. 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)

ARCHITECTURAL REVIEW

1. At time of submittal for final approval by the Development Review Officer (DRO), the architectural elevations for Convenience Store and Gas Canopy shall be submitted for final architectural review and approval. Elevations shall comply with the standards indicated in Article 5.C of the Unified Land Development Code (ULDC). Development shall be consistent with the approved architectural elevations, the DRO approved site plan, all applicable conditions of approval, and all ULDC requirements. (DRO: ARCH REVIEW - Zoning)

2. Gas station canopies shall be designed consistent with the following standards:

- a. a maximum height of twenty-five (25) feet measured from finished grade to highest point;
- b. a pitched roof with a minimum slope of 5:12;
- c. the clearance of the canopy shall be a maximum of sixteen (16) feet, measured from finished grade to the underside of the canopy;
- d. lighting for the gas station canopy shall be flush mounted or recessed; and,
- e. canopy signage shall be limited to a maximum of two (2) signs. (DRO: ARCH REV - Zoning)

3. In addition to Code requirements and prior to final approval by the Development Review Officer (DRO), Fenestration Details shall be integrated into the west half of the north facade and the north half of the west facade to avoid the appearance of a blank wall at the northwest corner of the building, should the easement holder not permit additional plant material in the northwest corner of the site. (DRO: ARCH REV - ARCH REV)

ENGINEERING

1. In order to comply with the mandatory Traffic Performance Standards, the Property owner shall be restricted to the following phasing schedule:

a. No Building Permits for the site may be issued after December 31, 2016. A time extension for this condition may be approved by the County Engineer based upon an approved Traffic Study which complies with Mandatory Traffic Performance Standards in place at the time of the request. This extension request shall be made pursuant to the requirements of Art. 2.E of the Unified Land Development Code. (DATE: MONITORING-Eng)

b. No Building Permits for the site may be issued until the contract has been awarded for the construction of intersection modifications to Hypoluxo Road and I-95. (BLDG PERMIT: MONITORING-Eng)

2. The Property Owner shall construct:

- i) separate left and right turn lane north approach of the maximum length practicable on the frontage road at Hypoluxo Road, and
- ii) the extension of the right turn lane east approach on Hypoluxo Road at the frontage road to a minimum length of 280 feet plus a 50 foot taper, both as determined by the County Engineer and FDOT as applicable.

This construction shall be concurrent with the paving and drainage improvements for the site. Any and all costs associated with the construction shall be paid by the property owner. These costs shall include, but are not limited to, utility relocations and acquisition of any additional required right-of-way.

a. Permits required from Palm Beach County and/or FDOT for this construction shall be obtained prior to the issuance of the first building permit. (BLDG PERMIT: MONITORING-Eng)

b. Construction shall be completed prior to the issuance of the first Certificate of Occupancy. (CO: MONITORING-Eng)

3. The Property Owner shall fund the cost of:

i) signal installation if warranted as determined by the County Engineer at Hypoluxo Road and the frontage road and

ii) a modified traffic separator on Hypoluxo Road between High Ridge Road and the frontage road to provide for maximum length back-to-back left turn lanes and a 50-foot taper.

Signalization shall be a mast arm structure installation. The cost of signalization shall also include all design costs and any required utility relocation and right of way or easement acquisition.

a. No Building Permits shall be issued until the developer provides acceptable surety to the Traffic Division in an amount as determined by the Director of the Traffic Division. (BLDG PERMIT: MONITORING-Eng).

b. In order to request release of the surety for the traffic signal at the above intersection, the Property Owner shall provide written notice to the Traffic Division stating that the final certificate of occupancy has been issued for this development and requesting that a signal warrant study be conducted at the intersection. The Traffic Division shall have 24 months from receipt of this notice to either draw upon the monies to construct the traffic signal or release the monies. In the event that the property is sold, the surety may be returned once the Traffic Division receives written documentation of the sale and a replacement surety has been provided to the Traffic Division by the new Property Owner. (ONGOING: ENGINEERING-Eng)

4. Prior to issuance of the first building permit, the property owner shall create a legal lot of record in accordance with provisions of Article 11 of the Unified Land Development Code. (BLDG PERMIT: MONITORING-Eng)

5. Prior to Final Site Plan Approval by the DRO, the property owner shall abandon, and relocate if necessary, the existing easements in conflict with the proposed structures. (DRO: ENGINEERING - Eng)

HEALTH

1. Prior to the issuance of a building permit, the property owner shall obtain an Onsite Sewage Treatment and Disposal System (OSTDS) permit from the Palm Beach County Health Department. (BLDG PERMIT:HEALTH- Health)

LANDSCAPE - GENERAL

1. At time of submittal for Building Permit, the property owner shall submit a Landscape Plan to the Landscape Section for review and approval. The Plan(s) shall be prepared in compliance with all landscape related Conditions of Approval as contained herein. (BLDG PERMIT: LANDSCAPE - Zoning)

2. Field adjustment of berm and plant material locations may be permitted to provide pedestrian sidewalks/bike paths and to accommodate transverse utility or drainage easements crossings and existing vegetation. (BLDG PERMIT: LANDSCAPE - Zoning)

LANDSCAPE - INTERIOR

3. Prior to final approval by the Development Review Officer (DRO), the Site Plan shall indicate the clustering of interior trees and shrubs within the easement area at the northwest corner of the site, subject to the approval of the easement holder. (DRO: ZONING - Zoning)

LANDSCAPE - PERIMETER

4. Prior to final approval by the Development Review Officer (DRO), a fifteen (15)-foot wide Type 2 Incompatibility buffer shall be provided along the western 100 feet of the north property line, subject to the approval of the easement holder. (DRO: ZONING - Zoning)

PLANNING

1. Should any archaeological artifacts be uncovered during development or soil disturbing activity, excavation shall halt; the County Archaeologist contacted and allowed to comment on the significance of the find as provided for in Article 9 of the ULDC. (ONGOING: PLANNING-Planning)

2. Prior to final approval by the Development Review Officer (DRO), a complete Certificate to Dig shall be submitted to the County Archaeologist. (DRO-PLANNING-Planning)

SIGNS

1. Ground mounted freestanding signs shall be limited as follows:

- a. maximum sign height, measured from finished grade to highest point - fifteen (15) feet;
- b. maximum sign face area per side - one hundred fifty (150) square feet;
- c. maximum number of signs - one (1); and,
- d. style - monument style only.

(BLDG PERMIT: BLDG - Zoning)

2. Wall signage shall not be located on the north building facade or the north half of the west building facade. (BLDG PERMIT: BLDG - Zoning)

3. Canopy signage shall not be visible from the residential uses to the northwest of the site as demonstrated by a Line of Sight analysis, if signage is proposed on the north or west side of the canopy. (BLDG PERMIT: BLDG - 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 (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: Disclosure

PALM BEACH COUNTY - ZONING DIVISION

FORM # 09

DISCLOSURE OF OWNERSHIP INTERESTS – PROPERTY

[TO BE COMPLETED AND EXECUTED BY THE PROPERTY OWNER(S) FOR EACH APPLICATION FOR COMPREHENSIVE PLAN AMENDMENT OR DEVELOPMENT ORDER]

TO: PALM BEACH COUNTY PLANNING, ZONING AND BUILDING EXECUTIVE DIRECTOR, OR HIS OR HER OFFICIALLY DESIGNATED REPRESENTATIVE

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared Frank Aliaga, hereinafter referred to as "Affiant," who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant is the [] individual or [] President _____ [position - e.g., president, partner, trustee] of Francalby Corporation [name and type of entity - e.g., ABC Corporation, XYZ Limited Partnership] that holds an ownership interest in real property legally described on the attached Exhibit "A" (the "Property"). The Property is the subject of an application for Comprehensive Plan amendment or Development Order approval with Palm Beach County.
2. Affiant's address is: P O Box 740347
Boynton Beach, Florida 33474 - 0347
3. Attached hereto as Exhibit "B" is a complete listing of the names and addresses of every person or entity having a five percent or greater interest in the Property. Disclosure does not apply to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.
4. Affiant acknowledges that this Affidavit is given to comply with Palm Beach County policy, and will be relied upon by Palm Beach County in its review of application for Comprehensive Plan amendment or Development Order approval affecting the Property. Affiant further acknowledges that he or she is authorized to execute this Disclosure of Ownership Interests on behalf of any and all individuals or entities holding a five percent or greater interest in the Property.
5. Affiant further acknowledges that he or she shall by affidavit amend this disclosure to reflect any changes to ownership interests in the Property that may occur before the date of final public hearing on the application for Comprehensive Plan amendment or Development Order approval.
6. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

7. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct, and complete.

FURTHER AFFIANT SAYETH NAUGHT.

Frank Aliaga
Frank Aliaga, Affiant
(Print Affiant Name)

The foregoing instrument was acknowledged before me this 14th day of October, 20 11, by Frank Aliaga, [] who is personally known to me or [] who has produced _____ as identification and who did take an oath.

Sandra J. Parks
Notary Public

Sandra J. PARKS
(Print Notary Name)

NOTARY PUBLIC

State of Florida at Large

My Commission Expires: August 13, 2012

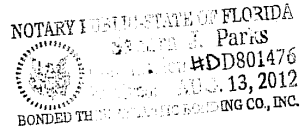


EXHIBIT "A"
PROPERTY

The West Half (W 1/2) of East Half (E 1/2) of the Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of Section 4, Township 45 South, Range 43 East, Palm Beach County, Florida, LESS the North 1019.90 feet thereof, as measured along the East and West lines of the said West Half (W 1/2) of the East Half (E 1/2) of the Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of Section 4, and LESS the Right-of-Way for I-95.

EXHIBIT E: Applicant's Variance Justification Statement

TYPE II VARIANCE REQUESTS

Type II Variances shall be considered by the Zoning Commission who shall find that all seven (7) of the criteria listed below have been satisfied by the Applicant prior to making a motion for approval, of a zoning or subdivision variance. Please note, when a code requirement was listed in both a table and a code section, but was the same regulation, the criteria responses have been grouped together for those variances.

This application is requesting approval of three (3) Concurrent Type II Variances to Article 7 – Perimeter Landscape Buffer requirements (*please see the Landscape section above for further detail*). A special circumstance exists peculiar to this parcel of land that is not typical to other developments as the site is encumbered by numerous FPL and City of Lake Worth easements related to the Lake Worth owned and operated switching station adjacent to the north and overhead transmission lines associated with same. The FPL and City of Lake Worth easements that encumber the site are as follows:

1. A one hundred (100) foot FPL easement on the western portion of the site (to be abandoned)
2. A one hundred twenty-five (125) foot FPL easement on the eastern portion of the site (to be abandoned)
3. A thirty-three (33) foot FPL easement on the northern portion of the site
4. A two (2) foot FPL easement on the eastern boundary that connects to the thirty-three (33) foot easement mentioned above, and
5. A ten (10) foot FPL easement in the northwest portion of the site (to be abandoned.)
6. A six (6) foot FPL easement on the western portion of the site.
7. A ten (10) foot wide access easement on the eastern portion of the site.
8. A two (2) foot wide, forty (40) foot long Lake Worth easement on the eastern portion of the site.
9. A two (2) foot wide, forty (40) foot long Lake Worth easement on the western portion of the site.

It is the intent of the Applicant to request the abandonment of three of the easements, as it is believed that the easements, issued in 1961, are no longer required. However, the thirty-three (33) foot FPL easement at the rear of the property and the two (2) each - two (2) foot easements along the western and eastern boundary are not proposed to be abandoned and have caused the Applicant to be unable to adhere to code requirements and provide the required fifteen (15) foot Type 2 Incompatibility Perimeter Buffer and portions of the west and east five (5) foot Compatibility Perimeter Buffers, without the approval of specific variances from the ULDC.

As part of this request, the Applicant is proposing three (3) variances to meet the requirements of the ULDC for perimeter buffers. The first of these variances is to allow for a fifteen (15) foot Type 2 Incompatibility Buffer to be located on the north perimeter to buffer the adjacent properties to the north and northwest, both of which have a residential land use designation of LR-3 and are both zoned Residential Single Family (RS). This

residential zoning designation creates the condition of an incompatible use type for the proposed use. The second and third variances requested are to allow for five (5) foot compatibility buffers to overlap easements along the east and west perimeters for approximately eighteen (18) feet.

The Applicant proposes to comply with the all ULDC buffer standards, which include a minimum six (6) foot opaque landscape barrier composed of continuous hedge materials and one (1) canopy or flowering/accent tree planted every twenty (20) linear feet, as permitted by the FPL "Right Tree – Right Place" program for the north perimeter. However, in order to comply with the ULDC requirements for the perimeter buffers along the north, east and west property lines, the Applicant must request variances from Article 7.D.12 to permit a one hundred (100) percent overlap of the encumbering thirty-three (33) foot FPL easement and the two (2) each - two (2) foot City of Lake Worth easements located on both the west and east property lines, by the proposed fifteen (15) and five (5) foot perimeter buffers, with no clear area for planting.

The first variance proposed by the Applicant is to allow for a fifteen (15) foot, or one hundred (100) percent, overlap of the thirty-three (33) foot FPL easement and the two (2) each - two (2) foot Lake Worth easements by a landscape buffer along the north property line. Approval of this variance will allow for adequate screening of the proposed use from the adjacent residential uses and provide for screening of the adjacent switching station use from the proposed use. Additionally, the Applicant is providing for additional landscaping in the northwest section of the site to provide for increased buffer screening of the adjacent residential lot. This additional buffering does not require a variance and will be reviewed by FPL for compliance with their 'Right Tree Right Place' program.

In order to mitigate further any perceived impacts created by the granting of this variance, the Applicant is proposing additional screening of the building from the existing residential uses to the northwest by relocating an eight foot eight inch (8'-8") portion of the required seventeen and a half (17½) foot north façade foundation planting area to the rear of the building, as is permitted by Article 7.D.11 for foundation plantings if adjacent a landscape buffer. The Applicant proposes to plant a minimum of two (2) flowering accent trees and hedge materials along the west façade affected foundation planting area, as well two (2) flowering accent trees and hedge materials along the north façade affected foundation planting area. These types of trees comply with the FPL planting guidelines and provide for a canopy to screen the building.

Variances #2 and #3, as requested by the Applicant, are to allow for the required landscape buffers along the east and west property lines to overlap an easement in its entirety. The property to the east is zoned industrial and to west MPUD, thereby making both adjacent properties compatible uses. The Applicant is proposing five (5) foot Compatibility Buffers on both the east and west property lines that will consist of a three (3) foot solid opaque hedge screen and one (1) canopy tree planted every twenty-five (25) feet. However, in order to comply with the ULDC requirements, variances are required to

allow for the overlap of the thirty-three (33) foot FPL easement located on the north property line.

More specifically, Variances #2 and #3 to Article 7.D.12, will allow the five (5) foot east and west buffers to overlap the southern eighteen (18) feet of the thirty-three (33) foot FPL easement along the north property line.

Approval of these requests will not adversely impact the adjacent properties to the north, east, or west as the properties are currently zoned Residential, Industrial, and/or MUPD and uses include the Lake Worth switching station, warehouse and other light industrial uses, and undeveloped commercial land. The small amount of residential land to the Northwest is buffered as previously described. Again, the Applicant will adhere to all the requirements of Florida Power and Light for the "Right Tree - Right Place" program in regards to planting therein.

The table below reflects the variances requested. It should be noted that all variances being requested are a direct result of the FPL easements existing on the site and that the minimum reduction possible is being requested. The requests are not self-imposed.

ULDC CODE SECTION	REQUIRED	PROPOSED	VARIANCE
<u>Variance #1</u> Article 7.D.12.	Five (5) foot maximum overlap of an easement by a landscape buffer, with a minimum of 5 foot clear for planting.	A fifteen (15) foot (100%) overlap of an easement by a landscape buffer for the entire length of the north property line, with no clear area for planting.	10 feet
<u>Variance #2</u> Article 7.D.12.	Five (5) foot maximum overlap of an easement by a landscape buffer, with a minimum of 5 foot clear for planting.	A five (5) foot (100%) overlap of an easement by a landscape buffer for an 18 foot section along the east property line, with no clear area for planting.	5 feet
<u>Variance #3</u> Article 7.D.12.	Five (5) foot maximum overlap of an easement by a landscape buffer, with a minimum of 5 foot clear for planting.	A five (5) foot (100%) overlap of an easement by a landscape buffer for an 18 foot section along the west property line, with no clear area for planting.	5 feet

TYPE II VARIANCE SEVEN (7) STANDARDS

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:

RESPONSES:

Variance #1, #2, and #3

A special circumstance exists peculiar to this parcel that is not applicable to other typical developments as the site is encumbered by numerous FPL and City of Lake Worth easements related to the Lake Worth owned and operated switching station to the north and the overhead transmission lines associated with same. These include 1) a thirty-three (33) foot FPL easement on the northern portion of the site; 2) a two (2) foot Lake Worth easement on the eastern boundary that overlaps the thirty-three (33) foot easement previously mentioned, and 3) a two (2) foot Lake Worth easement on the western boundary that overlaps that same thirty-three (33) foot FPL easement.

Historically in 1987, the site was granted approval of a variance, via Variance 87-37, to allow a request for no landscape strip to be required, with zero (0) shrubs, along the north (side) property line. As such, the appropriate County Board previously reviewed the criteria for the variance and granted approval based on same.

Specifically, the thirty-three (33) foot FPL easement and the two (2) each - two (2) foot Lake Worth easements at the rear of the property have caused the Applicant to be unable to plant the required fifteen (15) foot Type 2 Incompatibility Perimeter Buffer on the north perimeter and the five (5) foot required Compatibility buffer for an eighteen (18) foot section along the eastern and western perimeter buffer without a variance to overlap the easement one hundred (100) percent and provide for no clear planting. Approval of the variances will allow the Applicant to plant the required buffers, in compliance with the FPL "Right Tree – Right Place" program.

2. SPECIAL CIRCUMSTANCES AND CONDITIONS DO NOT RESULT FROM THE ACTIONS OF THE APPLICANT:

RESPONSES:

Variance #1, #2, and #3

The special circumstance is not a result of the action of the applicant, but is a direct result of easements imposed on the site by FPL and the City of Lake Worth some time ago and relate to the City of Lake Worth's overhead transmission lines and adjacent switching station operation.

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:

RESPONSES:

Variance #1, #2, and #3

The granting of the variances will not confer a special privilege to the Applicant denied other parcels in the same district. Any other development within a commercial zoning district and in the same situation would have the same issue and, upon providing satisfactory justification to the variance criteria would be granted the variance.

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:

RESPONSES:

Variance #1, #2, and #3

The literal interpretation and enforcement of the code would create an unnecessary and undue hardship on the Applicant to propose the required fifteen (15) foot perimeter buffer and east and west five (5) foot Compatibility buffers be installed south of the thirty-three (33) foot FPL easement and the two (2) each - two (2) foot easements of the City of Lake Worth. The impact to the site design would be considerable. The intent of the code is being met as the purpose of landscape buffers is to screen the proposed use from adjacent incompatible uses, in this case, the properties to the north (switching station) and northwest (residential lot).

5. GRANT OF VARIANCE IS THE MINIMUM VARIANCE THAT WILL MAKE POSSIBLE THE REASONABLE USE OF THE PARCEL OF LAND, BUILDING OR STRUCTURE:

RESPONSES:

Variance #1, #2, and #3

The granting of the variance is the minimum necessary to make reasonable use of the site to reinstitute the previously approved use for the property. In fact, any proposed uses would have severe site design constraints associated with providing the buffers outside of the easement areas. Approval of this variance is necessary to meet the requirements and goals of the ULDC and to comply with the requirements of FPL and

the City of Lake Worth for their overhead transmission lines and adjacent switching station operation.

6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH THE PURPOSES, GOALS, OBJECTIVES, AND POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:

RESPONSES:

Variance #1, #2, and #3

Granting the variance will be consistent with the purposes, goals objectives and policies of the comprehensive plan. The variance from Article 7 to overlap the proposed requested perimeter buffers one hundred (100) percent on the northern boundary of the site and portions of the eastern and western boundaries, is permitted with approval of the Zoning Commission, in accordance with the Unified Land Development Code.

Approval of the variances will allow the development of the site, and meets the intent of the CG standard zoning district, which is to provide commercial uses that provide a wide range of goods and services, have access from collector or arterial streets, and services a consumer market of at least a three (3) mile radius (Article 3.C.1.G.5.). The variances requested do not hinder the compliance of the request with the definition provided above from the ULDC or from the Comprehensive Plan's Future Land Use Element. This Element states that the CH category's, as being requested through the filing of the SCA application request, permitted uses are intended to serve areas greater than the adjacent residential areas, and serve a community and/or regional commercial purpose and includes a wide range of uses, such as the one proposed.

7. THE GRANT OF THE VARIANCE WILL NOT BE INJURIOUS TO THE AREA INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

RESPONSES:

Variance #1, #2, and #3

The granting of the variances will not be injurious to the area involved or detrimental to the public welfare. Granting of the variances to overlap the northern, eastern, and western perimeter buffers by one hundred (100) percent will enhance the proposed developments aesthetic value from the perspective of the adjacent properties and community as a whole and does not cause injury to the surrounding area or is it otherwise detrimental to the public welfare. The Applicant is requesting the minimum variance required to address the existing FPL and City of Lake Worth easements.

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