

1 RESOLUTION NO. 2010-14

2
3 ZONING APPLICATION VPB-09-010

4
5 A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE
6 OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; APPROVING THE
7 APPLICATION OF DRE HOLDINGS, LLC, DOING BUSINESS AS “HOLE IN THE
8 WALL”, LOCATED AT 14421 SOUTH DIXIE HIGHWAY, FOR A CONDITIONAL
9 USE APPROVAL TO ALLOW THE CONSUMPTION OF BEER AND WINE, WITH
10 OR WITHOUT FOOD, TO BE SERVED AT A BAR COUNTER IN CONJUNCTION
11 WITH THE EXISTING, PERMITTED, FULL SERVICE RESTAURANT THAT
12 SOLELY ALLOWS THE SERVICE OF ALCOHOL TO PERSONS SEATED AT
13 DINING TABLES; PROVIDING AN EFFECTIVE DATE.
14

15
16 WHEREAS, the applicant made applications for a conditional use approval, as described in the
17 Village of Palmetto Bay Department of Planning and Zoning Recommendation to the Village of Palmetto
18 Bay, which is reference in this resolution; and,
19

20 WHEREAS, the Village Council of the Village of Palmetto Bay conducted a quasi-judicial hearing on
21 the application at the Deering Estate Visitor Center on January 25, 2010; and,
22

23 WHEREAS, the Mayor and Village Council finds, based on substantial competent evidence in the
24 record, that the application for a conditional use is consistent with the Village’s Comprehensive Plan and the
25 applicable land development regulations; and,
26

27 WHEREAS, based on the foregoing finding, the Mayor and Village Council determined to grant the
28 application, as provided in this resolution.
29

30 NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF
31 THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:
32

33 Section 1. A hearing on the present applications was held on January 25, 2010, in accordance
34 with the Village’s enacted “Quasi-judicial hearing procedures.” Pursuant to the hearing, the Village Council
35 makes the following findings of fact, conclusions of law and order.
36

37 Section 2. Findings of fact.

38 Pursuant to section 30-30.4 of the Village of Palmetto Bay’s Land Development Code, the applicant is
39 requesting a conditional use approval to allow the consumption of beer and wine, with or without food, to be
40 served at a bar counter in conjunction with the existing, permitted, full service restaurant that solely allows the
41 service of alcohol to persons seated at dining tables on a property zoned B-1, Business District, under the
42 Village’s Land Development Regulations.
43

44 The Village adopted Division 30-130 of the Land Development Code, entitled “Alcoholic Beverages.” This
45 Division regulates the sale of alcoholic beverages, hours of operation and distance requirements relating to
46 sales and locations of alcohol sales in relation to schools and religious facilities. Certain businesses, for
47 example, restaurants, are solely entitled to sell alcohol in conjunction with food sales, at tables. See 30-

1 130.2(b) "Restaurants in B-1 and B-2 districts." Restaurants are not entitled, as of right, to conduct alcohol
2 sales from a bar-counter. Alcohol sales must be made to a table, in conjunction with the service of food.
3

4 The applicant established the restaurant use two years ago, and has maintained the restaurant use over the
5 years. The restaurant use is a permitted use under the existing B-1, Limited Business zoning district. The
6 applicant is seeking site plan approval in conjunction with a conditional use authorization to allow the sale of
7 alcoholic beverages at the counter-top area, with or without the consumption of food. The applicant is not
8 seeking to provide hard alcohol/liquor sales. An expansion of the permitted use to allow the counter-top
9 sales (with or without food sales) requires a public hearing by the Village Council for a conditional use.
10 Conditional uses are regulated by the provision of 30-30.4, below.
11

12 Section 30-30.4, Conditional Use Approval 13

14 In evaluating an application for a conditional use approval, the Mayor and Village Council shall take into
15 consideration, among other factors, the extent to which a conditional use shall be adequately accommodated
16 without generating material adverse impacts on properties and land uses within the immediate vicinity. A
17 conditional use is one that would not be appropriate without restriction throughout the land use district, but,
18 which, if controlled as to the area, location, hours of operation, and relation to the neighborhood or impacted
19 vicinity, would promote the public health, safety, welfare, order, comfort, convenience, appearance or
20 prosperity of the neighborhood. A conditional use shall be permitted only upon a finding that the proposed
21 use satisfies the provisions of 30-30.4.
22

23 Under the Village's Review procedures, an applicant is to comply with 30-30.5, relating to site plan review.
24 Upon final site plan review by staff, the applicant shall then seek the Village Council's approval of the site
25 plan. An application for a conditional use shall describe how the specific land use proposed meets the criteria
26 described below, and shall include a description of any measures proposed to mitigate against possible
27 adverse impacts of the proposed conditional use on properties in the immediate vicinity. In addition, the
28 application shall clearly comply with the provisions of 30-30.4(b), and document compliance with same:
29

30 a. Scale and intensity of the proposed conditional use as measured by the following:
31

- 32 (i) Floor area ratio and impervious surface ratio;
- 33 (ii) Traffic generation;
- 34 (iii) Square feet of enclosed building for each specific use;
- 35 (iv) Proposed employment;
- 36 (v) Proposed number and type of service vehicles;
- 37 (vi) Off-street parking needs, as required under Division 30-70; and,
- 38 (vii) Compliance with the Village's drainage requirements as provided for under 30-30.2(n).
39

40 b. On- or off-site improvement needs generated by the proposed conditional use and not identified on
41 the preceding list to include the following:
42

- 43 (i) Utilities;
- 44 (ii) Accessory structures or facilities;
- 45 (iii) Roadway or signalization improvements, or other similar improvements;
- 46 (iv) Public facility improvements required to ensure compliance with concurrency management
47 provisions provided in the Code; and,
- 48 (v) Other unique facilities or structures proposed as part of site improvements.

1 c. On-site amenities proposed to enhance site and planned improvements. Amenities may include
2 mitigative techniques such as:

- 3
- 4 (i) Open space;
- 5 (ii) Setbacks from adjacent properties;
- 6 (iii) Screening and buffers;
- 7 (iv) Landscaped berms to mitigate against adverse impacts to adjacent sites; and,
- 8 (v) Mitigative techniques to abate smoke, odor, noise, water, flooding and other noxious impacts.
- 9

10 The Mayor and Village Council reviewed the application during the public hearing and have determine that
11 the proposed use, application, and site plan comply with the below criteria. The Mayor and Village Council
12 have determined that the conditional use does meet the criteria or is adverse to the public interest.

13
14 During the quasi-judicial hearing, the applicant, The applicant has demonstrated the following:

15
16 (1) Land use compatibility. The conditional use, including its proposed scale and intensity, traffic
17 generating characteristics, and off-site impacts shall be compatible and harmonious with adjacent land uses
18 and shall not adversely impact land use activities in the immediate vicinity. Compatibility is defined as a
19 condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion
20 over time so that no use condition is unduly negatively impacted directly or indirectly by another use or
21 condition. Compatibility of land uses is dependent on numerous development characteristics which may
22 impact adjacent or surrounding uses. They include the items listed above in section 30-30.4(b). Compatibility
23 shall be measured based on the following characteristics of the proposed use or development in relationship
24 to surrounding development in the immediate area:

- 25
- 26 a. Permitted uses, structures and activities allowed within the land use category.
- 27 b. Building location, size, scale, dimensions, height, and floor area ratio.
- 28 c. Location and extent of parking, access drives and service areas.
- 29 d. Traffic generation, hours of operation, noise levels and outdoor lighting.
- 30 e. Alteration of light and air.
- 31 f. Setbacks and buffers such as fences, walls, landscaping and open space treatment.
- 32

33 (2) Sufficient site size, site specifications, and infrastructure to accommodate the proposed use. The size
34 and shape of the site, the proposed access and internal circulation, and the design must be adequate to
35 accommodate the proposed scale and intensity of conditional use requested. The site shall be of sufficient
36 size to provide adequate screening, buffers, landscaping, open space, off-street parking, efficient internal
37 traffic circulation, drainage, infrastructure and similar site plan improvements needed to mitigate against
38 potential adverse impacts of the proposed use on the immediate vicinity;

39
40 (3) Compliance with the Village's Comprehensive Plan and Chapter 30. The conditional use and site
41 plan shall comply with environmental, zoning and other applicable regulations of Chapter 30, and shall be
42 consistent with the Comprehensive Plan;

43
44 (4) Proper use of mitigative techniques. The conditional use and site plan shall incorporate mitigative
45 techniques needed to prevent adverse impacts to adjacent land uses. In addition, the design scheme shall
46 appropriately address off-site impacts to ensure that land use activities in the immediate vicinity, including
47 community infrastructure, are not unduly burdened with adverse impacts detrimental to the general public
48 health, safety and welfare;

1 (5) Hazardous waste. No conditional use which generates hazardous waste or uses hazardous materials
2 shall be located in the Village unless the specific location is consistent with the Comprehensive Plan, Chapter
3 30, and does not adversely impact wellfields, aquifer recharge areas, or other conservation resources, as may
4 be applicable now or in the future. The proposed use shall not generate hazardous waste or require use of
5 hazardous materials in its operation unless the Village Council approves conditions requiring mitigative
6 techniques designed to prevent any adverse impact to the general health, safety and welfare. The plan shall
7 provide for appropriate identification of hazardous waste and hazardous material, and regulate its use, storage
8 and transfer consistent with best management principles and practices.
9

10 The applicant's leasehold property is located at 14421 South Dixie Highway. The restaurant has been at its
11 current location for the past two (2) years. On December 24, 2009, the Village staff became aware that the
12 applicant had constructed a concrete slab on the side of the restaurant installed a walk-in cooler, and a fence
13 barrier, in conjunction with interior renovations, without obtaining building permits. As a result, the Building
14 Department issued a stop work order so that the applicant could seek building permits. Code Compliance
15 issued a courtesy warning advising of the need to comply with the Village's Code. When the applicant came
16 in for building permits it was determined that the applicant needed to seek a conditional use in order to allow
17 sales of beer and wine at the counter-top area of the restaurant.
18

19 As an existing restaurant with a State issued beer and wine sales license, and a permitted use certificate of use
20 as a restaurant from the Village, the applicant must obtain condition use approval to expand its alcohol sales
21 to counter-top sales, with or without food. The expansion of sales does not include hard alcohol/liquor sales.
22

23 The property is the seconded parcel on the southeast corner of SW 144th Street and South Dixie Highway.
24 On December 31, 2009, the Village's new procedures and Land Development Code became effective. As
25 part of the new Code, the Village adopted Division 30-30, relating Development Approval Procedures and
26 Division 30-10 adopting the Village's Zoning Land Use Map. As the applicant's property is less than five (5)
27 acres in size, it is not precluded by the Village's Moratorium Ordinance, No. 09-15, from proceeding with this
28 application.
29

30 Staff testified that the request, if approved, will allow the applicant to provide patrons the option of
31 consuming beer and wine at the designated counter-top area, with or without the consumption of food.
32 Under the existing zoning regulations, section 30-130.2(b), beer and wine can only be served to patrons
33 seated at dining tables. A conditional use would be needed to allow the expansion to the counter-top area.
34

35 Staff testified, that in analyzing the site plan review requirements of section 30-30.4(a) and (b), the restaurant,
36 as an existing use in the B-1 district (formerly a BU-1A district), should maintain the scale and intensity of its
37 current use, despite the request for the proposed conditional use. This staff conclusion is based upon the fact
38 that the floor area ratio and impervious surface ratio remains the same; traffic generation and capacity loads
39 for the site, as determined by the Miami-Dade Fire Department and DERM remain unchanged; the square
40 footage of enclosed building use remains the same; the proposed number of employees remains the same;
41 the proposed number and type of service vehicles remains the same; off-street parking needs, as required
42 under Division 30-70 remain the same; and, there are no changes to the site's drainage requirements.
43

44 The restaurant use is contained within a portion of an existing shopping center. There are no modifications
45 or changes to the on- or off-site shopping center improvements, including utilities; accessory structures or
46 facilities; roadway or signalization improvements, or other similar improvements; and/or any public facility
47 improvements or any other types of facilities.
48

1 Additionally, the modifications proposed solely affect the interior of the structure and south side of the unit.
2 At the south-side of the unit an outdoor, walk-in cooler has been installed. However, the property setbacks
3 comply with the underlying zoning district requirements. Staff notes, that there are no impacts to the open
4 space requirements of the Land Development Code. Nor are there any impacts to the screening, buffering;
5 or landscaping requirements of the Code. However, due to the use, mitigative techniques may be appropriate
6 to abate smoke, odor, and noise relating to the restaurant and expanded alcohol sales uses.

7
8 Code Compliance advises that the applicant has been at its current location for two (2) years. On December
9 24, 2009, Code Compliance issued a Courtesy Warning Notice for code violations. The Building Inspector
10 issued a Stop Work Order. The applicant had constructed a concrete slab on the side of the restaurant and
11 installed a walk-in cooler on the exterior of the premises, and constructed a fence barrier, in conjunction with
12 interior renovations, without obtaining building permits. Code Compliance has no objections to the
13 application, provided, however, the conditions contained in the Code Compliance correspondence to the
14 Planning and Zoning Department, dated January 12, 2010, are complied with by the applicant. A copy of the
15 Code Compliance letter is attached to the hearing item.

16
17 In making a final decision the Council determined compliance with the following five (5) criteria, as required
18 by section 30-30.4(c):
19

20 (1) Land use compatibility. Staff notes that the proposed use is consistent with the Village's Future Land
21 Use Plan, for a Business and Office designation in this area. The request Conditional Use Approval will be
22 compatible with the surrounding area and will provide additional services to the community and surrounding
23 neighborhood and will be consistent with the Comprehensive Plan. The Village Council recommends
24 approval, with conditions as delineated below. The conditional use, including its proposed scale and
25 intensity, traffic generating characteristics, and off-site impacts is compatible and harmonious with adjacent
26 land uses. The applicant is seeking to provide a community restaurant adjacent to a medical office complex
27 to the east, U-GAS to the north and Villagio at Palmetto Bay Condominium Complex and Quality Inn Hotel
28 to the south and South Dixie Hwy to the west. Staff does not anticipate the use to adversely impact land use
29 activities in the immediate vicinity. The development characteristics of the adjacent businesses in the strip
30 shopping center have existed for many years. The property is located along US 1, the Village's Business
31 corridor. There are concrete block fences and service alleyways between the commercial uses and the
32 residential premises to the east and south. The permitted uses, structures and activities allowed within the
33 land use category have existed for years. The building location, size, scale, dimensions, height, and floor area
34 ratio are not modified by the conditional use. The location and extent of parking, access drives and service
35 areas are not modified. Traffic generation, hours of operation, noise levels and outdoor lighting are not
36 anticipated to change. The applicant is proposing the alteration of light and air to block out light and air to
37 the front of the structure. Staff recommends against this site plan modification and recommends approval
38 upon the condition that the light and air not be impacted. The paneling of the windows and doors should be
39 removed. Setbacks and buffers such as fences, walls, landscaping and open space treatment are not affected.
40 The conditional use approval request pursuant to 30-30.4 is in keeping with the development pattern sought
41 for the area in that it is compatible with the surrounding zoning and land use regulations.
42

43 (2) Sufficient site size, site specifications, and infrastructure to accommodate the proposed use. The
44 proposed use does not affect or modify the size and shape of the site. It does not alter the access and/or
45 internal circulation, design, scale and/or intensity of the premises. The conditional use request should not
46 impact these factors. The site is an existing strip-shopping center and complies with screening, buffers,
47 landscaping, open space, off-street parking, efficient internal traffic circulation, drainage, infrastructure as
48 required under the Land Development Code.

1 (3) Compliance with the Village's Comprehensive Plan and Chapter 30. The conditional use and site
2 plan shall complies with environmental, zoning and other applicable regulations of Chapter 30, and the
3 proposed conditional use is found to be consistent with the Comprehensive Plan. The request Conditional
4 Use Approval will be compatible with the surrounding area and will provide additional services to the
5 community and surrounding neighborhoods and will be consistent with the Comprehensive Plan.
6

7 (4) Proper use of mitigative techniques. The conditional use approval and site plan shall incorporate
8 mitigative techniques needed to prevent adverse impacts to adjacent land uses and this resolution has
9 incorporated conditions as delineated below to mitigate said impacts. In addition, the existing design scheme
10 appropriately addresses off-site impacts to ensure that land use activities in the immediate vicinity, including
11 community infrastructure, are not unduly burdened with adverse impacts detrimental to the general public
12 health, safety and welfare. The predominant use of the unit is an existing use, within an established strip-
13 shopping center. Mitigative techniques may be needed to ensure that noise (volume), and/or smoke and
14 odors do not become nuisances to the adjacent units or the adjacent residential community.
15

16 (5) Hazardous waste. The proposed conditional use approval will not adversely impact wellfields,
17 aquifer recharge areas, or other conservation resources, as may be applicable now or in the future. The
18 proposed use will not generate hazardous waste or require use of hazardous materials in its operation.
19

20 The Division of Code Compliance advised that it had no objections to this application, provided the
21 conditions recommended by the Planning and Zoning Department staff are approved. Code Compliance
22 issued a letter dated January 12, 2010, to Planning Staff recommending certain conditions.
23

24 The Building Department advised that it had no objections to the application, provided the conditions
25 recommended by the Planning and Zoning Department staff are approved. The Building Department issued
26 a letter dated January 12, 2010, to the Planning and Zoning Department staff recommended certain
27 conditions.
28

29 The public hearing was opened and the following testimony was heard:
30

31 Several members of the community spoke in favor of the application. No one opposed the application.
32 There were two letters of opposition to the application in the file, however, the issues related to building
33 permits and noise, which are governed by the existing code and not the pending application.
34

35 Section 3. Conclusions of law.

36 The Mayor and Village Council approve the Conditional Use as the use will allow the applicant to provide
37 patrons the option of consuming beer and wine at the counter-top area, with or without the consumption of
38 food. The Mayor and Village Council, consistent with the above criteria of 30-30.4(c) finds that the proposed
39 use is in keeping with the basic intent and purpose of the zoning and land use regulations. As such approval
40 of this application is in character with the surrounding uses, and would be consistent with the Village's
41 Comprehensive Plan.
42

43 Section 4. Order

- 44 1. This is a final order.
45
46
47

1 2. Approval under section 30-30.4, will allow plans entitled "Hole in the Wall Pub Existing Built-Out,"
2 14421 South Dixie Hwy, Palmetto Bay, FL 33176 as prepared by TOPO International Inc. and Campanile &
3 Associates, Inc., consisting of two (2) sheets dated stamped received December 9, 2009, with the following
4 conditions (if recommended for approval):
5

6 a. The use and the development of the applicant's unit shall be in substantial compliance with
7 the floor plan submitted with this application and market Exhibit "A". The primary and existing use
8 is a restaurant. The applicant's conditional use shall not subsume the primary use. The dining area
9 shall not be replaced with entertainment facilities, thus altering the main use to a nightclub or bar, as
10 such an action would require a new conditional use hearing and further analysis under 30-130, of the
11 Village's Code of Ordinances.
12

13 b. The applicant shall be able to serve beer and wine, with or without food, to patrons seated at
14 the countertop/bar solely between the hours of 10:00 a.m. and 1:00 a.m. Monday thru Saturday, the
15 following day, Sunday, solely between the hours of 10:00 a.m. and 1:00 a.m., as per Section 30-130.6.
16

17 c. The establishment shall comply with the Noise Ordinance No. 04-24.
18

19 d. The applicant shall comply with the Florida Building Code and Building Department
20 requirements (including Fire Department) relating to the wood paneling along the front windows and
21 front door.
22

23 e. The applicant-owner or on-site manager(s) shall comply with all applicable laws and
24 conditions and shall properly manage the facility to preclude illegal and criminal activity on the
25 subject premise, including insuring that no activities associated with narcotic sales, use or possession;
26 and/or gambling occur.
27

28 f. The applicant shall provide a full service menu as indicated in Division 30-130 of the Land
29 Development Code during all hours of operation.
30

31 g. Signs shall be posted prohibiting loitering on the premises, including the parking lots,
32 consistent with the executed lease for the premises.
33

34 h. If the premise becomes a source of compliant for the Village of Palmetto Bay Police
35 Department, the applicant may be required to install a video tape monitoring system, which will
36 monitor the interior and exterior of the location. The videotape shall be maintained by the applicant
37 for seven (7) calendar days and made available to the police depart, upon request.
38

39 i. The subject property shall be limited to the established restaurant and proposed limited
40 counter-top wine and beer sales uses, respectively. The restaurant and counter-top area shall not
41 exceed 1,170 square feet, excluding the outdoor café area. No hard alcohol/liquor sales are allowed.
42

43 j. Maximum seating capacity shall not exceed DERM approval.
44

45 k. These conditions of approval shall be retained on the property at all times and shall be
46 produced immediately upon the request of Code Compliance or Police Department.
47
48

1 l. All terms and conditions of the approval shall be fulfilled before the use may be established.
2 The instant authorization is furthered conditioned upon the privileges being utilized within two (2)
3 years after the effective date of approval and, if such privileges are not utilized or proper building
4 permits are not obtain within said time and carried on diligently to completion, the authorization
5 shall terminate and become void.
6

7 m. If any portion of a privilege authorized by a conditional use is utilized, the conditions of the
8 conditional use authorization immediately become effective and must be strictly complied with. The
9 violation of any valid condition imposed by the Mayor and Village Council with granting of the
10 conditional use approval pursuant to the authority of this Section shall constitute a violation of this
11 Section and shall be subject to the same penalties as any other violation of this Code.
12

13 n. The applicant is to comply with the requirements of all other applicable
14 departments/agencies as part of the Village of Palmetto Bay's building permit submittal process.
15

16 o. The application must meet the minimum requirements of Chapter 24 of the Code of Miami-
17 Dade County.
18

19 p. The premises shall remain a no smoking establishment.
20

21 Section 5. Record.

22 The record shall consist of the notice of hearing, the applications, documents submitted by the
23 applicant and the applicant's representatives to the Village's Department of Planning and Zoning in
24 connection with the applications, the Village staff recommendation and attached cover sheet and documents,
25 the testimony of sworn witnesses and documents presented at the quasi-judicial hearing, and the tape and
26 minutes of the hearing. The record shall be maintained by the Village Clerk.
27

1 Section 6. Effective Date. This resolution shall take effect immediately upon approval.

2

3 PASSED and ADOPTED this 25th day of January, 2010.

4

5

6

7

8

9

Attest: 
Meighan Rader
Village Clerk


Eugene P. Flinn, Jr.
Mayor

10
11
12 APPROVED AS TO FORM:

13

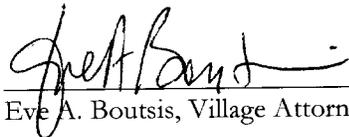
14

15

16

17

18


Eve A. Boutsis, Village Attorney

19
20
21 FINAL VOTE AT ADOPTION:

22

23

24

25

26

27

28

29

30

31

Council Member Ed Feller	<u>YES</u>
Council Member Howard Tendrich	<u>YES</u>
Council Member Shelley Stanczyk	<u>YES</u>
Vice-Mayor Brian W. Pariser	<u>YES</u>
Mayor Eugene P. Flinn, Jr.	<u>YES</u>