

Application No. 6

Commission District 10 Community Council 10

APPLICATION SUMMARY

Applicant/Representative: 8440 Property, Inc./Ben Fernandez, Esq. & Graham Penn, Esq.

Location: 300 feet west of SW 84 Avenue and south of SW 38 Street

Total Acreage: 1.59 Gross Acres, ± 1.52 Net Acres

Current Land Use Plan Map Designation: Low Density Residential (2.5 to 6 DU/Ac)

Requested Land Use Plan Map Designation: Medium-High Density Residential (25 to 60 DU/Ac)

Amendment Type: Standard

Existing Zoning/Site Condition: RU-3B (Bungalow Court District; bungalows on 10,000 sq. ft. net lots)/39 dwelling units in moderate condition

RECOMMENDATIONS

Staff: **DENY/DO NOT TRANSMIT** (August 25, 2007)

Westchester Community Council: **ADOPT WITH CHANGE** to limit development to 39 to 49 residential units, with 10% Workforce Housing (September 18, 2007)

Planning Advisory Board (PAB) acting as Local Planning Agency: **ADOPT WITH CHANGE** with acceptance of proffered covenant (October 15, 2007)

Board of County Commissioners: **ADOPT AND TRANSMIT** (November 27, 2007)

Revised Staff Recommendation: **DENY** (March 24, 2008)

Final Recommendation of PAB acting as Local Planning Agency: **TO BE DETERMINED** (March 31, 2008)

Initial Staff Recommendation:

In the Initial Recommendations Report published on August 25, 2007, the Staff recommended: **DENY AND DO NOT TRANSMIT** the proposed standard amendment to redesignate the subject site from “Low Density Residential” (2.5 to 6.0 dwelling units per gross acre) to “Medium-High Density Residential” (25 to 60 dwelling units per gross acre) on the Land Use Plan (LUP) map of the Comprehensive Development Master Plan (CDMP) based on the staff analysis as summarized in the Principal Reasons for Recommendations below:

Principal Reasons for Recommendations:

1. Goal II of the Housing Element in the CDMP supports the provision of affordable housing from within the existing housing stock. The subject site, which is 300 feet west of SW 84 Avenue and south of SW 38 Street, currently provides 39 “studio” apartments in fair condition for low- and moderate-income individuals and families at a reported cost of \$625 per month. This rental amount is affordable to households earning \$25,000 and above. The units are 100% occupied and many residents have lived in their apartments for over 20-years; approximately 10-15% of the residents are elderly. The proffered covenant will limit redevelopment of the site to 49 units, of which 10-percent (5 units) will be offered as “workforce” housing. Approval of the application would result in the elimination of 34 existing “workforce” and/or “affordable” apartments in exchange for 44 “market-rate” housing units or apartments.
2. The proposed height and density, and the limited vehicular access of the subject site are incompatible and do not protect the character of the established neighborhood. The only access to the site is a local road, SW 38 Street. The proposed 35-foot maximum building height for the northern 50-feet of the subject site and, as indicated in the proffered draft declaration of restrictions (covenant), is incompatible with the character of the surrounding one-story, single-family detached homes in the Tropical Highlands and Tropical Gardens subdivisions. The covenant does not provide a height limit for the remainder of the site, thus, the development may not be compatible with the adjacent one and two-story condominium units in the Magnum Bungalow Court Condominiums.
3. The application does not satisfy a deficiency in the Plan map to accommodate projected population or economic growth within the County. A survey of the Analysis Area, Minor Statistical Area (MSA) 5.4, found that the existing supply of land for multi-family units is projected for depletion beyond the year 2025.

4. The impact of the proposed development will be minimal on the adjoining roadway system. However, SW 40 Street, between SW 87 Avenue and SR 826, has been determined to operate at LOS E+26% once the developments already approved are in place. Thus, the application would cause the subject roadway segment to fail the adopted E+20% level of service standard.
5. The application, which increases density, may promote transit ridership and pedestrianism since it is within a ¼ mile of a bus route with a 20-minute headway during peak periods. Bus stops at SW 40 Street and SW 83, 84, and 87 Avenues provide access to Metrobus Route 40, which has a 20-minute headway during peak periods.
6. The application will not degrade environmental or historical resources.

New Information:

Since the BCC transmittal public hearing on November 27, 2007 and the publication date of the Initial Recommendations Report (August 25, 2007), the Department of Planning and Zoning (DP&Z) has received updated information from the applicant and the Department of Community Affairs (DCA) concerning the application site. The DCA has submitted its "Objections, Recommendations and Comments" (ORC) report to the County on February 26, 2008 with one objection to this application. Objection No. 4 stated that Miami-Dade County would be prohibited from adopting comprehensive plan amendments, which increase residential density, until the necessary school amendments to the CDMP and a revised Interlocal Agreement with the Miami-Dade County School Board has been adopted and transmitted to DCA. This application would result in an additional 10 dwelling units. The applicant on March 19, 2008 proffered a revised covenant that included one new provision, stating a building permit for a residential use will not be obtained until the necessary school amendments to the CDMP and a revised Interlocal Agreement with the Miami-Dade County School Board has been adopted and transmitted to DCA on the structure (see Appendix 1).

Revised Staff Recommendation:

Staff still recommends **DENIAL** of the application to redesignate the subject site from "Low Density Residential" (2.5 to 6.0 dwelling units per gross acre) to "Medium-High Density Residential" (25 to 60 dwelling units per gross acre) on the LUP map of the CDMP for the following reasons:

1. Several reasons stated in the initial recommendations for denial of the application are still valid. The proposed height and density, and the limited vehicular access of the subject site are incompatible and do not protect the character of the established neighborhood. A need does not exist in MSA 5.4 since the existing supply of land for multi-family units is projected for depletion beyond the year 2025.

2. The applicant has not adequately addressed Goal II of the Housing Element in the CDMP, which supports the provision of affordable housing from within the existing housing stock. Approval of the application would result in the elimination of 34 existing “workforce” and/or “affordable” apartments in exchange for 44 “market-rate” housing units or apartments. During the public hearing on November 27, 2007, Commissioner Souto requested that the applicant consider options for relocating the existing residents, particularly the elderly, to new housing. The applicant stated that he owns 50-60 residential units approximately 1-mile from the application site, and assured the commissioners that all of the existing residents would be offered a unit when they become available. While the applicant has verbally agreed to provide alternative housing options, there has been no commitment in writing such as modifying the proffered covenant to reflect this commitment.

APPENDIX

Appendix 1: Revised Declaration of Restrictions, dated March 19, 2008

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Appendix 1

Revised Declaration of Restrictions, dated March 19, 2008

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PLANNING & ZONING
METROPOLITAN PLANNING SECT

This instrument was prepared by:

Name: Graham Penn, Esq.

Address: Bercow & Radell, P.A.

200 S. Biscayne Boulevard, Suite 850

Miami, FL 33131

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DECLARATION OF RESTRICTIONS

WHEREAS, the undersigned Owner holds the fee simple title to the land in Miami-Dade County Florida, described in Exhibit "A," attached to this Declaration (the "Property"), which is supported by the submitted attorney's opinion;

WHEREAS, the Property is the subject of Comprehensive Development Master Plan ("CDMP") Amendment Application No. 6 of the April 2007 Amendment Cycle;

WHEREAS, the Owner has sought a Land Use Plan amendment to change the designation of the Property from "Low Density Residential" to "Medium-High Density Residential."

NOW THEREFORE, in order to assure the Miami-Dade County (the "County") that the representations made by the Owner during the consideration of the Application will be abided by the Owner, its successors and assigns, freely, voluntarily, and without duress, makes the following Declaration of Restrictions covering and running with the Property:

Development Limitations. The Property shall be developed with no more than forty-nine (49) residential units. Furthermore, there shall be a minimum 30 foot setback from the northern property line and all residential buildings within the northern fifty (50) feet of the Property shall be a maximum of thirty-five (35) feet in height.

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Water Conservation Regulations. The Owner shall incorporate the measures listed in Exhibit B into the design, construction and operation of any residential development on the Property.

Workforce Housing. At least ten (10) percent of the residential units developed on the Property shall be either: (1) if offered for sale, initially sold to persons determined by the Miami-Dade County Housing Agency to be within the income range of 65% to 140% of the median family income for Miami-Dade County as published annually by the U.S. Department of Housing and Urban Development (HUD) as maintained by the Department of Planning and Zoning; or (2) if offered for lease, leased to persons determined by the Miami-Dade County Housing Agency to be within the income range of 65% to 140% of the median family income at no more than the Fair Market Rent for Miami-Dade County as defined by HUD.

Building Permits. Owner agrees not to obtain a building permit for any building containing a residential use until such time as Miami-Dade County has adopted a public school facilities element, entered into an Interlocal Agreement with the Miami-Dade County Public School System with regard to school concurrency, and amended its Comprehensive Development Master Plan to implement school concurrency.

Covenant Running with the Land. This Declaration on the part of the Owner shall constitute a covenant running with the land and may be recorded, at the Owner's expense, in the public records of Miami-Dade County, Florida and shall remain in full force and effect and be binding upon the undersigned Owner, and their heirs, successors and assigns until such time as the same is modified or released. These restrictions during their lifetime shall be for the benefit of, and limitation upon, all present and future owners of the real property and for the benefit of Miami-Dade County and the public welfare. The Owner, and its heirs, successors and assigns, acknowledge that acceptance of this Declaration does not in any way obligate or provide a limitation on the County.

Term. This Declaration is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years from the date this Declaration is recorded after which time it shall be extended automatically for successive periods of ten (10)

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years each, unless an instrument signed by the, then, owner(s) of the Property has been recorded agreeing to change the covenant in whole, or in part, provided that the Declaration has first been modified or released by Miami-Dade County.

Modification, Amendment, Release. This Declaration of Restrictions may be modified, amended or released as to the land herein described, or any portion thereof, by a written instrument executed by the then owner(s) of the fee simple title to the Property, provided that the same is also approved by the Board of County Commissioners of Miami-Dade County, Florida. Any such modification or release shall be subject to the provisions governing amendments to Comprehensive Plans, as set forth in Chapter 163, Part II, Florida Statutes or successor legislation that may, from time to time, govern amendments to Comprehensive Plans (hereinafter "Chapter 163"). Such modification or release shall also be subject to the provisions governing amendments to the CDMP as set forth in Section 2-116.1 of the Code of Miami-Dade County, or successor regulations governing modifications to the CDMP. In the event that the Property is incorporated within a new municipality that amends, modifies, or declines to adopt the provisions of Section 2-116.1 of the Miami-Dade County Code, then modifications or releases of this Declaration shall be subject to Chapter 163 and the provisions of such ordinances as may be adopted by such successor municipality for the adoption of amendments to its comprehensive plan; or, in the event that the successor municipality does not adopt such ordinances, subject to Chapter 163 and the provisions of the municipality's ordinances that apply to the adoption of district boundary changes. Should this Declaration be so modified, amended, or released, the Director of the Department of Planning and Zoning or the executive officer of a successor department, or, in the absence of such Director or executive officer, by his or her assistant in charge of the office in his/her office, shall execute a written instrument effectuating and acknowledging such modification, amendment, or release.

Enforcement. Enforcement shall be by action against any parties or person violating, or attempting to violate, any covenants. The prevailing party in any action or suit pertaining to or arising out of this declaration shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of his

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attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

Authorization for Miami-Dade County to Withhold Permits and Inspections. In the event the terms of this Declaration are not being complied with, in addition to any other remedies available, the County is hereby authorized to withhold any further permits, and refuse to make any inspections or grant any approvals, until such time as this declaration is complied with.

Election of Remedies. All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

Presumption of Compliance. Where construction has occurred on the Property or any portion thereof, pursuant to a lawful permit issued by the County, and inspections made and approval of occupancy given by the County, then such construction, inspection and approval shall create a rebuttable presumption that the buildings or structures thus constructed comply with the intent and spirit of this Declaration.

Severability. Invalidation of any one of these covenants, by judgment of Court, shall not affect any of the other provisions which shall remain in full force and effect. However, if any material portion is invalidated, the County shall be entitled to revoke any approval predicated upon the invalidated portion

Recordation and Effective Date. This Declaration shall be filed of record in the public records of Miami-Dade County, Florida at the cost of the Owner following the approval of the Application. This Declaration shall become effective immediately upon recordation. Notwithstanding the previous sentence, if any appeal is filed, and the disposition of such appeal results in the denial of the Application, in its entirety, then this Declaration shall be null and void and of no further effect. Upon the disposition of an appeal that results in the denial of the Application, in its entirety, and upon written request, the Director of the Planning and Zoning Department or the executive officer of the successor of said department, or in the absence of

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such director or executive officer by his/her assistant in charge of the office in his/her absence, shall forthwith execute a written instrument, in recordable form, acknowledging that this Declaration is null and void and of no further effect.

Acceptance of Declaration. The Owner acknowledges that acceptance of this Declaration does not obligate the County in any manner, nor does it entitle the Owner to a favorable recommendation or approval of any application, zoning or otherwise, and the Board of County Commissioners retains its full power and authority to deny each such application in whole or in part and decline to accept any conveyance.

Owner. The term Owner shall include all heirs, assigns, and successors in interest.

[Execution Pages Follow]

STATE OF _____
COUNTY OF _____

Witness my signature and official seal this _____ day of _____, 2007, in the County and State aforesaid.

Notary, State of _____
Printed Name: _____

My Commission Expires: _____

The foregoing instrument was acknowledged before me by _____ of 2440 Property, Inc., on behalf of the corporation. He/She is personally known to me or has produced identification. Witness my signature and official seal this _____ day of _____, 2007, in the County and State aforesaid.

Print Name: _____
Signature: _____
Print Name: _____
Signature: _____
Print Name: _____
Signature: _____
Print Name: _____
Signature: _____

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**ACKNOWLEDGMENT
CORPORATION**

Signed, witnessed, executed and acknowledged on this _____ day of _____, 2007.

IN WITNESS WHEREOF, _____ (Corporate name) has caused these presents to be signed in its name by its proper officials.

Witnesses:

Signature

8440 Property, Inc.
5783 Bird Road, # 302
Miami, FL 33155

Print Name

Signature

By _____
(President, Vice-President or CEO*)

Print Name

Print Name: _____
***Note: All others require attachment of original corporate resolution of authorization]**

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by _____ the _____ of 8440 Property, Inc., on behalf of the corporation. He/She is personally known to me or has produced _____, as identification. Witness my signature and official seal this _____ day of _____, 2007, in the County and State aforesaid.

My Commission Expires:

Notary, State of _____
Printed Name: _____