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12-31-2007 Version # 1

BOARD OF COUNTY COMMISSIONERS

ZONING HEARINGS

COUNTY COMMISSIONERS CHAMBERS OF THE STEPHEN P. CLARK CENTER - 2ND FLOOR

111 NW 1 Street, Miami

Thursday, February 7, 2008 at 9:30 a.m.

APPEALS

					DISTRICT	
1.	07-9-CZ8-3	LIBERTY STATION, INC.	06-192	30/31-52-42	N	3

Official Zoning Agenda

BOARD OF COUNTY COMMISSIONERS

COUNTY COMMISSION MEETING OF THURSDAY, FEBRUARY 7, 2008

NOTICE: THE FOLLOWING HEARING IS SCHEDULED FOR 9:30 A.M., AND

ALL PARTIES SHOULD BE PRESENT AT THAT TIME

ANY PERSON MAKING IMPERTINENT OR SLANDEROUS REMARKS OR WHO BECOMES BOISTEROUS WHILE ADDRESSING THE COMMISSION SHALL BE BARRED FROM FURTHER AUDIENCE BEFORE THE COMMISSION BY THE PRESIDING OFFICER, UNLESS PERMISSION TO CONTINUE OR AGAIN ADDRESS THE COMMISSION BE GRANTED BY THE MAJORITY VOTE OF THE COMMISSION MEMBERS PRESENT.

NO CLAPPING, APPLAUDING, HECKLING OR VERBAL OUTBURSTS IN SUPPORT OR OPPOSITION TO A SPEAKER OR HIS OR HER REMARKS SHALL BE PERMITTED. NO SIGNS OR PLACARDS SHALL BE ALLOWED IN THE COMMISSION CHAMBER. PERSONS EXITING THE COMMISSION CHAMBER SHALL DO SO QUIETLY.

THE USE OF CELL PHONES IN THE COMMISSION CHAMBERS IS NOT PERMITTED. RINGERS MUST BE SET TO SILENT MODE TO AVOID DISRUPTION OF PROCEEDINGS. INDIVIDUALS, INCLUDING THOSE ON THE DAIS, MUST EXIT THE CHAMBERS TO ANSWER INCOMING CELL PHONE CALLS. COUNTY EMPLOYEES MAY NOT USE CELL PHONE CAMERAS OR TAKE DIGITAL PICTURES FROM THEIR POSITIONS ON THE DAIS.

THE NUMBER OF FILED PROTESTS AND WAIVERS ON EACH APPLICATION WILL BE READ INTO THE RECORD AT THE TIME OF HEARING AS EACH APPLICATION IS READ.

THOSE ITEMS NOT HEARD PRIOR TO THE ENDING TIME FOR THIS MEETING, WILL BE DEFERRED TO THE NEXT AVAILABLE ZONING HEARING MEETING DATE FOR THIS BOARD.

SWEARING IN OF WITNESSES

A. LIBERTY STATION, INC. (07-9-CZ8-3/06-192) **30 & 31-52-42**
BCC/District 3

LIBERTY STATION, INC. is appealing the decision of COMMUNITY ZONING APPEALS BOARD #8, which denied without prejudice Request #1 and approved the withdrawal of Request #2 for the following:

(1) BU-1 to BU-1A

(2) Applicant is requesting to permit a 5' high chain link fence in lieu of the required 5' high masonry wall where a business lots abuts RU zoned property along the rear (east) property line.

Upon a demonstration that the applicable standards have been satisfied, approval of request #2 may be considered under §33-311(A)(16) (Alternative Site Development Option for the BU Zoning District) or under §33-311(A)(4)(b) (Non-Use Variance) or (c) (Alternative Non-Use Variance).

Plans are on file and may be examined in the Department of Planning and Zoning entitled "Liberty Station," as prepared by EGN, consisting of 5 sheets, Sheet 1 dated stamped received 8/8/07, Sheet A1(a) dated stamped received 8/13/07 and Sheets 2, A4(a) and A4(b) dated stamped received 5/3/07 and plans as prepared by JFS Design, Inc., consisting of 1 sheet, dated stamped received 5/3/07 for a total of 6 sheets. Plans may be modified at public hearing.

SUBJECT PROPERTY: Lots 9 – 14, Block 6, BELLEVUE BISCAYNE, Plat book 17, Page 29.

LOCATION: The Southeast corner of N.E. 119 Terrace and West Dixie Highway, Miami-Dade County, Florida.

SIZE OF PROPERTY: 100' x 165'

Department of Planning and Zoning Recommendation: Approval of the appeal and of the zone change to BU-1A, subject to the Board's acceptance of the proffered covenant; withdrawal of Request #2.

Protests: 62 Waivers: 0

DENIAL OF APPEAL (SUSTAIN C.Z.A.B.): _____

APPROVAL OF APPEAL (OVERRULE C.Z.A.B.): _____

DEFERRED: _____

THE END

NOTICE OF APPEAL RIGHTS

Decisions of the Community Zoning Appeals Board (CZAB) are appealed either to Circuit Court or to the Board of County Commissioners (BCC) depending upon the items requested in the Zoning Application. Appeals to Circuit Court must be filed within 30 days of the transmittal of the CZAB resolution. Appeals to BCC must be filed with the Zoning Hearings Section of the Department of Planning and Zoning within 14 days of the posting of the results in the department.

Further information and assistance may be obtained by contacting the Legal Counsel's office for the Department of Planning and Zoning at (305) 375-3075, or the Zoning Hearings Section at (305) 375-2640. For filing or status of Appeals to Circuit Court, you may call the Clerk of the Circuit Court at (305) 349-7409.

1. LIBERTY STATION
(Applicant)

07-9-CZ8-3 (06-192)
BCC/District 3
Hearing Date: 2/7/08

Property Owner (if different from ap

Is there an option to purchase ☐ /le cated on the approval of the zoning request? Yes ☐ No ☑

Disclosure of interest form attached? Yes

Previous Zoning H s on the Property:

Year	Applicant	Request	Board	Decision
1949	Renuart Holding Co., Inc.	Zone change from RU-3 to BU-1.	BCC	Approved

Action taken today does not constitute a final development order, and one or more concurrency determinations will subsequently be required. Provisional determinations or listings of needed facilities made in association with this Initial Development Order shall not be binding with regard to future decisions to approve or deny an Intermediate or Final Development Order on any grounds.

MIAMI-DADE COUNTY
COMMUNITY ZONING APPEALS BOARD - AREA 8
MOTION SLIP

#3

APPLICANT'S NAME: **LIBERTY STATION, INC.**

REPRESENTATIVE: Brian Adler

HEARING NUMBER	HEARING DATE	RESOLUTION NUMBER		
07-9-CZ8-3 (06-192)	September 19, 2007	CZAB8		07

REC: Approval of request #1; approval with conditions of request #2 under Section 33-311(A)(4)(b) (NUV) and denial without prejudice of same request under Section 33-311(A)(4)(c) (ANUV).

☐ WITHDRAW: ☐ APPLICATION ☐ ITEM(S):_____

■ DEFER: ☐ INDEFINITELY ■ TO: Oct 23, 2007 ☐ W/LEAVE TO AMEND

☐ DENY: ☐ WITH PREJUDICE ☐ WITHOUT PREJUDICE

☐ ACCEPT PROFFERED COVENANT ☐ ACCEPT REVISED PLANS

☐ APPROVE: ☐ PER REQUEST ☐ PER DEPARTMENT ☐ PER D.I.C.
☐ WITH CONDITIONS

■ OTHER: Lack of time remaining in the hearing. The applicant's rep was at the podium, but there was not enough time to proceed with the application. The applicant put his name, address, and phone number on the record for the neighbors to meet with him. The neighbors objected to the deferral, but there was no time remaining for the application to be heard.

TITLE	M/S	NAME	YES	NO	ABSENT
MR.		Richard C. BROWM			
MR.		Patrick CURE			
MR.		Arthemon JOHNSON			
MS.		Voncarol Yvette KINCHEN			
MR.		Fredericke Alan MORLEY (C.A.)			
CHAIRMAN		Vernell EVERETT			
		VOTE:			

EXHIBITS: ☐ YES ■ NO COUNTY ATTORNEY: **DENNIS KERBEL**

MIAMI-DADE COUNTY DEPARTMENT OF PLANNING AND ZONING
RECOMMENDATION TO THE BOARD OF COUNTY COMMISSIONERS

APPLICANT: Liberty Station, Inc. **PH:** Z06-192 (07-9-CZ8-3)

SECTION: 30 & 31-52-42 **DATE:** February 7, 2008

COMMISSION DISTRICT: 3 **ITEM NO.:** 1

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A. INTRODUCTION

- **REQUESTS:**

  The applicant is appealing the decision of Community Zoning Appeals Board #8 which denied without prejudice Request #1 and approved the withdrawal of Request #2 for the following:

  (1) BU-1 to BU-1A

  (2) Applicant is requesting to permit a 5' high chain link fence in lieu of the required 5' high masonry wall where a business lots abuts RU zoned property along the rear (east) property line.

  Upon a demonstration that the applicable standards have been satisfied, approval of request #2 may be considered under §33-311(A)(4)(b) (Non-Use Variance) or (c) (Alternative Non-Use Variance).

- **SUMMARY OF REQUESTS:** The applicant is appealing the decision of the Community Zoning Appeals Board-8 (CZAB-8) that denied a request to change the zoning on the property from BU-1, Neighborhood Business District, to BU-1A, Limited Business District. Additionally, the Board approved the applicant's withdrawal of request #2. Approval of this appeal would allow the rezoning of the property from BU-1, Neighborhood Business District, to BU-1A, Limited Business District, to allow the development of the site with additional commercial uses.

- **LOCATION:** The Southeast corner of N.E. 119 Terrace and West Dixie Highway, Miami-Dade County, Florida.

- **SIZE:** 100' x 165'

- **IMPACT:** Approval of this appeal will allow the applicant to provide additional business services to the community. However, some of the BU-1A uses may have a negative aural and visual impact on the residential community to the east.

B. ZONING HEARINGS HISTORY: On October 25, 1949, the subject property was part of a tract of land that was granted a district boundary change from RU-3, Four Unit Apartment District, to BU-1, Neighborhood Business District, pursuant to Resolution No. 3414.

C. COMPREHENSIVE DEVELOPMENT MASTER PLAN (CDMP):

1. The Adopted 2015 and 2025 Land Use Plan designates the subject property as being within the Urban Development Boundary for **Business and Office** use. This category accommodates the full range of sales and service activities. Included are retail, wholesale, personal and professional services, call centers, commercial and professional offices, hotels, motels, hospitals, medical buildings, nursing homes (also allowed in the institutional category), entertainment and cultural facilities, amusements and commercial recreation establishments such as private commercial marinas. Also allowed are telecommunication facilities (earth stations for satellite communication carriers, satellite terminal stations, communications telemetry facilities and satellite tracking stations). These uses may occur in self-contained centers, high-rise structures, campus parks, municipal central business districts or strips along highways. In reviewing zoning requests or site plans, the specific intensity and range of uses, and dimensions, configuration and design considered to be appropriate will depend on locational factors, particularly compatibility with both adjacent and adjoining uses, and availability of highway capacity, ease of access and availability of other public services and facilities. Uses should be limited when necessary to protect both adjacent and adjoining residential use from such impacts as noise or traffic, and in most wellfield protection areas uses are prohibited that involved the use, handling, storage, generation or disposal of hazardous material or waste, and may have limitations as to the maximum buildable area, as defined in Chapter 24 of the County Code. When the land development regulations are amended pursuant to Land Use Element Policies LU-9P and LU-9Q, live-work and work-live developments shall be permitted on land designated as Business and Office, as transitional uses between commercial and residential areas.

2. **Uses and Zoning Not Specifically Depicted.** Existing lawful residential and non-residential uses and zoning are not specifically depicted on the LUP map. They are however reflected in the average Plan density depicted. All such lawful uses and zoning are deemed to be consistent with this Plan as provided in the section of this chapter titled "Concepts and Limitations of the Land Use Plan Map." The limitations referenced in this paragraph pertain to existing zoning and uses. All approval of new zoning must be consistent with the provisions of the specific category in which the subject parcel exists, including the provisions for density averaging and definition of gross density.

D. NEIGHBORHOOD CHARACTERISTICS:

ZONING	LAND USE PLAN DESIGNATION
Subject Property:	
BU-1 vacant land	Business and Office
Surrounding Properties:	
NORTH: BU-1; office building	Business and Office

SOUTH:	BU-1; commercial building	Business and Office
EAST:	RU-2; vacant land	Low Density Residential, 2.5 to 6 dua
WEST:	BU-1A; office/apartments	Business and Office
	City of N. Miami; apartments	Business and Office

The subject property is located on the southeast corner of N.E. 119 Terrace and West Dixie Highway. To the north, south and partially to the west of the subject property are offices and commercial buildings. To the east is residentially zoned vacant land. The area is characterized by duplexes and single-family residences further to the east and residential apartment buildings are also located in the City of North Miami to the west.

E. SITE AND BUILDINGS:

Site Plan Review:	(No site plan submitted)
Scale/Utilization of Site:	**Acceptable**
Location of Buildings:	**N/A**
Compatibility:	**Acceptable**
Landscape Treatment:	**N/A**
Open Space:	**N/A**
Buffering:	**N/A**
Access:	**Acceptable**
Parking Layout/Circulation:	**N/A**
Visibility/Visual Screening:	**N/A**
Energy Considerations:	**N/A**
Roof Installations:	**N/A**
Service Areas:	**N/A**
Signage:	**N/A**
Urban Design:	**N/A**

F. PERTINENT REQUIREMENTS/STANDARDS:

In evaluating an application for a **district boundary change, Section 33-311** provides that the Board shall take into consideration, among other factors the extent to which:

(1) The development permitted by the application, if granted, conforms to the Comprehensive Development Master Plan for Miami-Dade County, Florida; is consistent with applicable area or neighborhood studies or plans, and would serve a public benefit warranting the granting of the application at the time it is considered;

(2) The development permitted by the application, if granted, will have a favorable or unfavorable impact on the environmental and natural resources of Miami-Dade County, including consideration of the means and estimated cost necessary to minimize the adverse impacts; the extent to which alternatives to alleviate adverse impacts may have a substantial impact on the natural and human environment; and whether any irreversible or irretrievable commitment of natural resources will occur as a result of the proposed development;

(3) The development permitted by the application, if granted, will have a favorable or unfavorable impact on the economy of Miami-Dade County, Florida;

(4) The development permitted by the application, if granted, will efficiently use or unduly burden or affect public transportation facilities, including mass transit, roads, streets and highways which have been constructed or planned and budgeted for construction, and if the development is or will be accessible by public or private roads, streets or highways.

(5) The development permitted by the application, if granted, will efficiently use or unduly burden or affect public transportation facilities, including mass transit, roads, streets and highways which have been constructed or planned and budgeted for construction, and if the development is or will be accessible by public or private roads, streets or highways.

Section 33-311(A)(4)(b) Non-Use Variances From Other Than Airport Regulations. Upon appeal or direct application in specific cases, the Board shall hear and grant applications for non-use variances from the terms of the zoning and subdivision regulations and may grant a non-use variance upon a showing by the applicant that the non-use variance maintains the basic intent and purpose of the zoning, subdivision and other land use regulations, which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community and provided that the non-use variance will be otherwise compatible with the surrounding land uses and would not be detrimental to the community. No showing of unnecessary hardship to the land is required.

Section 33-311(A)(4)(c) Alternative Non-Use Variance Standard. Upon appeal or direct application in specific cases to hear and grant applications from the terms of the zoning and subdivision regulations for non-use variances for setbacks, minimum lot area, frontage and depth, maximum lot coverage and maximum structure height, the Board (following a public hearing) may grant a non-use variance for these items, upon a showing by the applicant that the variance will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions thereof will result in unnecessary hardship, and so the spirit of the regulations shall be observed and substantial justice done; provided, that the non-use variance will be in harmony with the general purpose and intent of the regulation, and that the same is the minimum non-use variance that will permit the reasonable use of the premises; and further provided, no non-use variance from any airport zoning regulation shall be granted under this subsection.

G. NEIGHBORHOOD SERVICES:

DERM	**No objection***
Public Works	**No objection***
Parks	**No objection**
MDT	**No objection**
Fire Rescue	**No objection***
Police	**No objection**
Schools	**No comment**

*Subject to conditions indicated in their memoranda.

H. ANALYSIS:

On October 23, 2007, the Community Zoning Appeals Board #8 (CZAB-8) denied without prejudice the applicant's request to rezone the subject property from BU-1, Neighborhood Business District, to BU-1A, Limited Business District, (request #1) by a vote of 5 to 0, pursuant to Resolution #CZAB-8-42-07. At the aforementioned hearing, the Board also approved the applicant's request to withdraw request #2, to permit a 5' high chain link fence in lieu of the required 5' high masonry wall where a business lots abuts RU zoned property along the rear (east) property line. Staff notes that the applicant intends to withdraw this request before this Board and staff concurs with same. On November 9, 2007, the applicant appealed the CZAB–8's decision to the Board of County Commissioners (BCC) citing that the Board's decision to deny the requested district boundary change was arbitrary and capricious, void of substantial competent evidence, and contrary to the recommendation of the Department of Planning and Zoning. Staff notes that all existing, legally established uses and zoning are consistent with the CDMP. As such, the CZAB-8's decision to deny the zone change and retain the existing BU-1 zoning on the subject property is consistent with the CDMP.

The subject property is located at the southeast corner of N.E. 119 Terrace and West Dixie Highway. The applicant is requesting a zone change from BU-1 to BU-1A, (request #1) to allow for the development of the site with the additional uses allowed in the BU-1A zone. The parcels to the north and south, along West Dixie Highway, are developed with offices and commercial buildings. To the west of the subject property is a mixed-use office and apartment building and an apartment complex with multiple buildings, the latter located in the City of North Miami, across West Dixie Highway, a major north/south roadway. To the east of the subject property is a vacant parcel of land zoned RU-2, Two-Family residential District, separated from the subject property by a 12' wide service alley. Further to the east, duplexes and single-family residences characterize the area. The applicant has voluntarily proffered a covenant that (1) restricts the hours of operation for the commercial development from 5:00 a.m. to midnight only, and (2) requires that the owner place a sign on the property prohibiting vehicles from making a right turn when exiting the commercial site onto NE 119 Terrace, and (3) stipulating that trees will be planted 20' on center along the rear (east) property line, in order to provide additional buffering for the residentially zoned parcels to the east.

The Department of Environmental Resources Management **(DERM) has no objections** to this application. Their memorandum indicates that this application meets the minimum requirements of Chapter 24 of the Code of Miami-Dade County and that the applicant will have to comply with all conditions set forth in their memorandum. The **Public Works Department** has **no objections** to this application. Their memorandum indicates that the application meets traffic concurrency because it lies within the urban infill area. The Miami-Dade Fire Rescue Department **(MDFR)** has **no objections** to this application. Also, they indicate that the estimated response time is **5.56 minutes**

Approval of this appeal would rezone the subject property from BU-1 to BU-1A. The Land Use Plan (LUP) map of the Comprehensive Development Master Plan (CDMP) designates the subject property for **Business and Office** use. This category accommodates the full range of sales and service activities including retail, wholesale, personal and professional services, call centers, commercial and professional offices, hotels, motels, hospitals,

medical buildings, nursing homes, entertainment and cultural facilities, amusements and commercial recreation establishments. The interpretative text of the CDMP provides that in reviewing zoning requests or site plans, the specific intensity and range of uses, and dimensions, configuration and design considered to be appropriate will depend on locational factors, particularly compatibility with both adjacent and adjoining uses, and availability of highway capacity, ease of access and availability of other public services and facilities. The CDMP further stipulates that uses should be limited when necessary to protect both adjacent and adjoining residential use from such impacts as noise or traffic, which the proffered covenant will ensure. In addition, the CDMP prohibits, in most wellfield protection areas, uses that involve the use, handling, storage, generation or disposal of hazardous material or waste, and may limit the maximum buildable area, as defined in Chapter 24 of the County Code. The applicant is seeking to rezone the subject property to BU-1A, which staff supports. The proposed BU-1A zone allows uses such as gas stations, drive-through banks and restaurants, dancing halls, grocery stores, mortuaries and pet shops. Staff opines that the proposed zone change to BU-1A, subject to the Board's acceptance of the voluntarily proffered covenant, would be **compatible** with the area and would be **consistent** with the allowable uses as listed in the Business and Office category of the CDMP. The well-traveled West Dixie Highway to the west and a residential district to the east border the subject site. West Dixie Highway is a well developed main road with a variety of commercial zones along its east side, varying from BU-1, to BU-3, Liberal Business District, within one half mile of the subject property. Said commercial zones are bordered by residential uses to the east. Based on the aforementioned, staff opines that the proposed zone change to BU-1A is **consistent** with the Business and Office designation of the LUP map of the CDMP, and is **compatible** with the surrounding area, subject to the conditions proffered by the applicant in the covenant.

When considering district boundary changes, the Board shall hear and grant or deny applications by taking into consideration if the proposed development will have a favorable or unfavorable impact on the environmental and natural resources of Miami-Dade County, including consideration of the means and estimated cost necessary to minimize the adverse impacts, the extent to which alternatives to alleviate adverse impacts may have a substantial impact on the natural and human environment, and whether any irreversible or irretrievable commitment of natural resources will occur as a result of the proposed development. The Board shall consider if the development will have a favorable or unfavorable impact on the economy of Miami-Dade County, if it will efficiently utilize or unduly burden water, sewer, solid waste disposal, recreation, education, public transportation facilities which have been constructed or planned and budgeted for construction, and if the development is or will be accessible by public or private roads, streets or highways. When evaluating this application for a district boundary change to BU-1A, staff notes that the request is consistent with the Business and Office designation of the LUP map of the Comprehensive Development Master Plan. Though approval of the BU-1A zoning would allow more intense uses than the abutting BU-1 zones to the north and south of the subject site on the east side of West Dixie Highway, staff's research has indicated that this development fits the similar pattern of varying intensities of commercial zones along West Dixie Highway in this area and would not be incompatible with same. Additionally, BU-1A zoning exists to the west of the subject property, and as previously mentioned, BU-1A zoning is also prevalent along this corridor, as well as BU-2 and BU-3 zoning further to the northeast along the Highway. Staff also notes that DERM and the Public Works Department do not object to the proposed development, nor do any of the other County agencies that submitted memoranda in conjunction with this application in

their assessments of the impact of the development on County services. Additionally, the applicant has voluntarily proffered a covenant that (1) restricts the hours of operation for the commercial development on the site from 5:00 a.m. to midnight, (2) that the owner place a sign on the property restricting any vehicular egress onto NE 119 Terrace from turning to the right, and (3) ensuring that additional landscaping above that required by the landscape regulations in the form of trees be planted 20' on center along the rear (east) property line. Staff opines that the provisions of the covenant will reduce any potential negative impact that the commercial development of the site might have on the residentially zoned property to the east resulting from the approval of this application. Staff therefore opines that the proposed BU-1A zoning is **consistent** with the CDMP's Business and Office Land Use Plan map category and **compatible** with the other BU-1A, BU-2 and BU-3 zones found along the West Dixie Highway corridor. As such, subject to the Board's acceptance of the voluntarily proffered covenant and to the withdrawal of request #2, staff recommends approval of the appeal and of the request for a zone change to BU-1A.

I. RECOMMENDATION:

Approval of the appeal and of the zone change to BU-1A, subject to the Board's acceptance of the proffered covenant and withdrawal of Request #2.

DATE INSPECTED: 07/26/07
DATE TYPED: 08/02/07
DATE REVISED: 08/09/07, 10/15/07, 12/21/07, 12/28/07, 01/02/08, 01/18/08, 01/28/08
DATE FINALIZED: 01/28/08
SB:MTF:LVT:CH

Subrata Basu, Interim Director
Miami-Dade County Department of
Planning and Zoning

Memorandum

MIAMI-DADE COUNTY

Date: March 7, 2007

To: Diane O'Quinn-Williams, Director
Department of Planning and Zoning

From: Jose Gonzalez, P.E., Assistant Director
Environmental Resources Management

Subject: C-08 #Z2006000192-Revised
Liberty Station, Inc.
W. Dixie Highway and 119th Terrace
District Boundary Changes from BU-1 to BU-1A
Non-Use Variance to Waive Wall Requirements
(BU-1) (0.38 Acres)
31-52-42

The Department of Environmental Resources Management (DERM) has reviewed the subject application and has determined that it meets the minimum requirements of Chapter 24 of the Code of Miami-Dade County, Florida (the Code). Accordingly, DERM may approve the application, and the same may be scheduled for public hearing.

Potable Water Service

Public water can be made available to the subject property. Therefore, connection of the proposed development to the public water supply system shall be required, in accordance with Code requirements.

Existing public water facilities and services meet the Level of Service (LOS) standards set forth in the Comprehensive Development Master Plan (CDMP). Furthermore, the proposed development order, if approved, will not result in a reduction in the LOS standards, subject to compliance with the conditions required by DERM for this proposed development order.

Wastewater Disposal

The closest public sanitary sewer is located approximately 1,000 feet from the subject property; therefore, connection to the public sanitary sewer system is not feasible. Section 24-43.1(6) of the Code prohibits the approval of any building permit, certificate of use and occupancy, municipal occupational license, platting action or zoning action for any nonresidential land use served or to be served by any liquid waste storage, disposal or treatment method other than public sanitary sewers or any source of potable water supply other than a public water main. The same Code Section also provides that the Director of DERM must issue his written approval prior to any zoning action.

Notwithstanding the foregoing, the Director of DERM has determined that the subject application complies with the provisions of Section 24-43.1(6)(g) of the Code. Accordingly, the subject property has been approved for the interim use of a septic tank and drainfield system as a means for the disposal of the domestic liquid waste, provided that the property is connected to public water, in conjunction with the proposed gas station and convenience store and those land uses permitted in the underlying zoning classification which are compatible with the use of a septic tank.

Additionally, the owner of the property shall submit properly executed covenants running with the land in favor of Miami-Dade County, as required by Sections 24-43.1(4)(a) and 24-43.1(6)(g) of the Code prior to DERM approval of subsequent development orders. Consequently, DERM may approve the subject application and the same may be scheduled for public hearing.

Stormwater Management
All stormwater shall be retained on-site utilizing properly designed seepage or infiltration drainage structures. Drainage plans shall provide for full on-site retention of the stormwater runoff of a 5-year/1-day storm event.

Site grading and development shall comply with the requirements of Chapter 11C of the Code.

Any proposed development shall comply with County and Federal flood criteria requirements. The proposed development order, if approved, will not result in a reduction in the LOS standards for flood protection set forth in the CDMP, subject to compliance with the conditions required by DERM for this proposed development order.

Hazardous Materials Management
Due to the nature of uses allowed in the proposed zoning classification, the applicant may be required to obtain DERM approval for management practices to control the potential discharge and spillage of pollutants associated with some land uses permitted in the requested zoning district. The applicant is advised to contact the DERM Industrial Facilities Section concerning required management practices.

Operating Permits
Section 24-18 of the Code authorizes DERM to require operating permits from facilities that could be a source of pollution. The applicant should be advised that, due to the nature of some land uses permitted under the proposed zoning classification, operating permits from DERM may be required. It is, therefore, suggested that the applicant contact DERM concerning operating requirements.

Fuel Storage Facilities
Section 24-45 of the Code outlines regulations for any proposed or existing underground storage facilities. The regulations provide design, permitting, installation, modification, repair, replacement and continuing operation requirements and criteria. In addition, monitoring devices, inventory control practices and pressure testing of fuel storage tanks is required. The applicant is advised to contact the Storage Tank Section of DERM concerning permitting requirements for fuel storage facilities.

Wetlands
The subject property does not contain jurisdictional wetlands, as defined in Section 24-5 of the Code; therefore, a Class IV Wetland Permit will not be required.

The applicant is advised that permits from the Army Corps of Engineers (305-526-7181), the Florida Department of Environmental Protection (561-681-6600), and the South Florida Water Management District (1-800-432-2045) may be required for the proposed project. It is the applicant's responsibility to contact these agencies.

Tree Preservation
The subject property may contain specimen-sized (trunk diameter 18 inches or greater) trees. Section 24-49 of the Code requires the preservation of tree resources. Consequently, DERM will require the preservation of all the specimen-sized trees, as defined in the Code, on the site. A Miami-Dade County tree removal permit shall be required prior to the removal or relocation of any trees. A tree survey

showing all the tree resources on-site will be required prior to reviewing the tree removal permit application. The applicant is advised to contact DERM staff for permitting procedures and requirements prior to development of site and landscaping plans.

Enforcement History
DERM has found no open or closed enforcement records for the subject property.

Concurrency Review Summary
DERM has conducted a concurrency review for this application and has determined that the same meets all applicable LOS standards for an initial development order, as specified in the adopted CDMP for potable water supply, wastewater disposal, and flood protection. Therefore, the application has been approved for concurrency, subject to the comments and conditions contained herein.

This concurrency approval does not constitute a final concurrency statement and is valid only for this initial development order, as provided for in the adopted methodology for concurrency review. Additionally, this approval does not constitute any assurance that the LOS standards would be met by any subsequent development order applications concerning the subject property.

This memorandum shall constitute DERM's written approval, as required by the Code.

If you have any questions concerning the comments, or wish to discuss this matter further, please contact Enrique A. Cuellar at (305) 372-6764.

cc: Lynne Talleda, Zoning Evaluation - P&Z
Ron Connally, Zoning Hearings - P&Z
Franklin Gutierrez, Zoning Agenda Coordinator - P&Z

REVISION 1

PH# Z2006000192
CZAB - C08

PUBLIC WORKS DEPARTMENT COMMENTS

Applicant's Names: LIBERTY STATION, INC

This Department has no objections to this application.

This project meets traffic concurrency because it lies within the urban infill area where traffic concurrency does not apply.

Raul A Pino, P.L.S.
23-APR-07

PETITION OF APPEAL FROM DECISION OF
MIAMI-DADE COUNTY COMMUNITY ZONING APPEALS BOARD
TO THE BOARD OF COUNTY COMMISSIONERS

CHECKED BY CAL AMOUNT OF FEE $2,034.56

RECEIPT # Z06-192

DATE HEARD: 10/ 23/ 2007

BY CZAB # 8 CZAB-84-07

RECEIVED
NOV 09 2007
ZONING HEARINGS SECTION
MIAMI-DADE PLANNING AND ZONING DEPT.
BY CAL
DATE RECEIVED STAMP

****

This Appeal Form must be completed in accordance with the "Instruction for Filing an Appeal" and in accordance with Chapter 33 of the Code of Miami-Dade County, Florida, and return must be made to the Department on or before the Deadline Date prescribed for the Appeal.

RE: Hearing No. Z2006000192

Filed in the name of (Applicant) Liberty Station, Inc., a Florida corporation

Name of Appellant, if other than applicant Same as above

Address/Location of APPELLANT'S property: SE Corner of NE 119th Terrace and West Dixie Highway [Appeal of Resolution No. CZAB8-42-07]

Application, or part of Application being Appealed (Explanation): Denial of district boundary change from BU-1 to BU-1A

Appellant (name): Liberty Station, Inc. hereby appeals the decision of the Miami-Dade County Community Zoning Appeals Board with reference to the above subject matter, and in accordance with the provisions contained in Chapter 33 of the Code of Miami-Dade County, Florida, hereby makes application to the Board of County Commissioners for review of said decision. The grounds and reasons supporting the reversal of the ruling of the Community Zoning Appeals Board are as follows: (State in brief and concise language)

The denial of the requested district boundary change was arbitrary and capricious, void of substantial competent evidence, and contrary to the recommendation of Miami-Dade County's professional staff.

APPELLANT MUST SIGN THIS PAGE

Date: 9th day of November, 2007.

Signed: _____

Brian S. Adler, Esquire
Bilzin Sumberg Baena Price & Axelrod LLP
200 South Biscayne Boulevard, Suite 2500
Miami, Florida 33131
Attorney for Appellant
Phone: 305-350-2351
Fax: 305-351-2206

Subscribed and Sworn to before me on the 9th day of November year 2007

_____
Notary Public

(stamp/seal)

Commission expires:

NOTARY PUBLIC STATE OF FLORIDA
Kyra Albarracin
Commission # DD348962
Expires: AUG. 22, 2008
www.AaronNotary.com

APPELLANT'S AFFIDAVIT OF STANDING
(must be signed by each Appellant)

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

Before me the undersigned authority, personally appeared BRIAN S. ADLER, ESQUIRE, attorney for Liberty Station, Inc. (Appellant) who was sworn and says that the Appellant has standing to file the attached appeal of a Community Zoning Appeals Board decision.

The Appellant further states that they have standing by virtue of being of record in Community Zoning Appeals Board matter because of the following:

(Check all that apply)

X 1. Participation at the hearing
X 2. Original Applicant
____ 3. Written objection, waiver or consent

Appellant further states they understand the meaning of an oath and the penalties for perjury, and that under penalties of perjury, Affiant declares that the facts stated herein are true.

Further Appellant says not.

Witnesses:

Signature

Christine A. Bower
Print Name

Signature

Dois Diaz
Print Name

Brian S. Adler, Esquire
Bilzin Sumberg Baena Price & Axelrod LLP
200 South Biscayne Boulevard, Suite 2500
Miami, Florida 33131
Attorney for Appellant

Sworn to and subscribed before me on the 9th day of November, 2007.

Appellant is personally know to me or has produced as _____ as identification.

Notary
(Stamp/Seal)
Commission Expires:

Kyra Albarracin
Commission # DD348962
Expires: AUG. 22, 2008
www.AaronNotary.com

RESOLUTION NO. CZAB8-42-07

WHEREAS, **LIBERTY STATION, INC.** applied for the following:

(1) BU-1 to BU-1A

(2) Applicant is requesting to permit a 5' high chain link fence in lieu of the required 5' high masonry wall where a business lots abuts RU zoned property along the rear (east) property line.

Upon a demonstration that the applicable standards have been satisfied, approval of request #2 may be considered under §33-311(A)(16) (Alternative Site Development Option for the BU Zoning District) or under §33-311(A)(4)(b) (Non-Use Variance) or (c) (Alternative Non-Use Variance).

Plans are on file and may be examined in the Zoning Department entitled "Liberty Station," as prepared by EGN, consisting of 5 sheets, Sheet 1 dated stamped received 8/8/07, Sheet A1(a) dated stamped received 8/13/07 and Sheets 2, A4(a) and A4(b) dated stamped received 5/3/07 and plans as prepared by JFS Design, Inc., consisting of 1 sheet, dated stamped received 5/3/07 for a total of 6 sheets. Plans may be modified at public hearing.

SUBJECT PROPERTY: Lots 9 – 14, Block 6, BELLEVUE BISCAYNE, Plat book 17, Page 29.

LOCATION: The Southeast corner of N.E. 119 Terrace and West Dixie Highway, Miami-Dade County, Florida, and

WHEREAS, a public hearing of the Miami-Dade County Community Zoning Appeals Board 8 was advertised and held, as required by law, and all interested parties concerned in the matter were given an opportunity to be heard, and at which time the applicant requested permission to withdraw the request to permit a 5' high chain link fence in lieu of the required 5' high masonry wall where a business lots abuts RU zoned property along the rear (east) property line (Item #2), and

WHEREAS, upon due and proper consideration having been given to the matter, it is the opinion of this Board that requested withdrawal of the request to permit a 5' high chain link fence in lieu of the required 5' high masonry wall where a business lots abuts RU zoned property along the rear (east) property line (Item #2) should be granted, and that

the requested district boundary change to BU-1A (Item #1) would not be compatible with the neighborhood and area concerned and would be in conflict with the principle and intent of the plan for the development of Miami-Dade County, Florida, and should be denied, and

WHEREAS, a motion to withdraw Item #2 and to deny Item #1 without prejudice was offered by Richard C. Brown, seconded by Patrick Cure, and upon a poll of the members present the vote was as follows:

Richard C. Brown	aye	Vernell Everett	aye
Patrick Cure	aye	Arthemon Johnson	absent
		Voncarol Yvette Kinchen	aye

Fredricke Alan Morley aye

NOW THEREFORE BE IT RESOLVED by the Miami-Dade County Community Zoning Appeals Board 8, that the requested withdrawal of the request to permit a 5' high chain link fence in lieu of the required 5' high masonry wall where a business lots abuts RU zoned property along the rear (east) property line (Item #2) be and the same is hereby granted and said Item is hereby withdrawn without prejudice.

BE IT FURTHER RESOLVED that the requested district boundary change to BU-1A (Item #1) be and the same is hereby denied without prejudice.

The Director is hereby authorized to make the necessary notations upon the records of the Miami-Dade County Department of Planning and Zoning.

PASSED AND ADOPTED this 23rd day of October, 2007.

Hearing No. 07-9-CZ8-3
ej

STATE OF FLORIDA

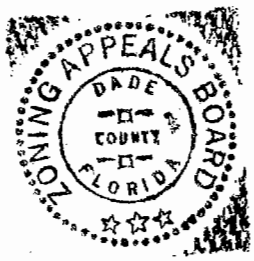
COUNTY OF MIAMI-DADE

I, Earl Jones, as Deputy Clerk for the Miami-Dade County Department of Planning and Zoning as designated by the Director of the Miami-Dade County Department of Planning and Zoning and Ex-Officio Secretary of the Miami-Dade County Community Zoning Appeals Board 8, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of Resolution No. CZAB8-42-07 adopted by said Community Zoning Appeals Board at its meeting held on the 23rd day of October, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand on this the 31st day of October, 2007.

Earl Jones, Deputy Clerk (3230)
Miami-Dade County Department of Planning and Zoning

SEAL



REVISION 2

Memorandum

Date: 02-AUG-07

To: Subrata Basu, Interim Director
Department of Planning and Zoning

From: Herminio Lorenzo, Fire Chief
Miami-Dade Fire Rescue Department

Subject: Z2006000192

Fire Prevention Unit:

Approval. Fire Engineering and Water Supply Bureau has no objections to site plan date stamped February 28, 2007.

Service Impact/Demand:

Development for the above Z2006000192
located at THE SOUTHEAST CORNER OF N.E. 119 TERRACE AND WEST DIXIE HIGHWAY, MIAMI-DADE COUNTY, FLORIDA.
in Police Grid 0594 is proposed as the following:

_____ residential	dwelling units	_____ industrial	square feet
_____ Office	square feet	_____ institutional	square feet
2,720 Retail	square feet	_____ nursing home/hospitals	square feet

Based on this development information, estimated service impact is: .77 alarms-annually.
The estimated average travel time is: 5:56 minutes

Existing services:

The Fire station responding to an alarm in the proposed development will be:

Station 30, Miami Shores, 9500 NE 2 Avenue
Rescue, BLS Engine

Planned Service Expansions:

The following stations/units are planned in the vicinity of this development:

Station 67, Arcola, 1275 NW 79 Street

Fire Planning Additional Comments:

Current service impact calculated based on plans date stamped February 28, 2007. Substantial changes to the plans will require additional service impact analysis.

TEAM METRO
NORTHEAST OFFICE

ENFORCEMENT HISTORY

Liberty Station Inc.	THE SOUTHEAST CORNER OF N.E. 119 TERRACE AND WEST DIXIE HIGHWAY, MIAMI-DADE COUNTY, FLORIDA.
APPLICANT	**ADDRESS**
February 7, 2008	06-192
HEARING DATE	**HEARING NUMBER**

CURRENT ENFORCEMENT HISTORY:

May 24, 2007	NCO observed weeds exceeding 18 inches in height plus junk, trash and litter on the swale adjacent to 30-2231-037-0320.
May 30, 2007	NCO made an additional inspection to determine on which parcel or parcels the violations were occurring. The NCO observed a commercial cart on the triangular, southernmost portion of 30-2331-037-0310. As this folio number is identified with what appears to be two contiguous parcels on the map and as the triangular, southernmost parcel is a portion of the adjacent Veterans of Foreign War's paved parking lot, the NCO has emailed a query to the Property Appraiser Web Support. The query asked for clarification about whether the triangular parcel is part of the 0310 folio number owned by Liberty Station or whether the web site map is in error. If the triangular parcel belongs to Liberty Station a ticket for commercial vehicle storage will be issued.
May 31, 2007	Civil Violation Notice 953724 was issued to Liberty Station for 19-14(A), failure to maintain a non-residential lot (the -0310 parcel). Civil Violation Notice 953725 was issued for 19-14(B), failure to

	maintain the swale adjacent to a non-residential lot (the -0320 parcel).
June 7, 2007	The Property Appraiser confirmed that the triangular parcel on which the commercial cart was seen on May 30th was not part of the -0310 folio-numbered parcel owned by Liberty Station and that the Property Appraiser would correct the records' error.
July 26, 2007	The lots and the adjacent rights-of-way were cleared. Both cases were closed.
July 26, 2007	A large detached sign without permit was seen on the property. A new case was opened and 30-day warning letter R87555 was issued.
August 7, 2007	Case number 200706003799 for the sign without permit remains open.
August 7, 2007	There is no street address on record for this property. There is no use on this property. There is no certificate of use for this property.
September 27, 2007	Case number 2007060033799 for the sign without permit was closed after the sign was removed.
December 4, 2007	There is no street address on record for this property. There is no use on this property. There is no certificate of use for this property.
January 4, 2008	No violation exist at this property at this time.

DISCLOSURE OF INTEREST*

If a **CORPORATION** owns or leases the subject property, list principal stockholders and percent of stock owned by each. [Note: Where principal officers or stockholders consist of other corporation(s), trust(s), partnership(s) or similar entities, further disclosure shall be made to identify the natural persons having the ultimate ownership interest].

CORPORATION NAME: Liberty Station, Inc.

NAME AND ADDRESS	Percentage of Stock
Carlos Fontecilla, President 12305 S. Dixie Hwy Miami, Florida 33156	50%
Isabel Fontecilla 12305 S. Dixie Hwy Miami, Florida 33156	50%

If a **TRUST** or **ESTATE** owns or leases the subject property, list the trust beneficiaries and percent of interest held by each. [Note: Where beneficiaries are other than natural persons, further disclosure shall be made to identify the natural persons having the ultimate ownership interest].

TRUST/ESTATE NAME: _____

NAME AND ADDRESS _____ Percentage of Stock _____

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206-192
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ZONING HEARINGS SECTION
MIAMI-DADE PLANNING AND ZONING DEPT.
BY _____

If a **PARTNERSHIP** owns or leases the subject property, list the principals including general and limited partners. [Note: Where partner(s) consist of other partnership(s), corporation(s), trust(s) or similar entities, further disclosure shall be made to identify the natural persons having the ultimate ownership interests].

PARTNERSHIP OR LIMITED PARTNERSHIP NAME: _____

NAME AND ADDRESS _____ Percentage of Stock _____

If there is a **CONTRACT FOR PURCHASE** by a Corporation, Trust or Partnership, list purchasers below, including principal officers, stockholders, beneficiaries or partners. [Note: Where principal officers, stockholders, beneficiaries or partners consist of other corporations, trusts, partnerships or similar entities, further disclosure shall be made to identify natural persons having ultimate ownership interests].

NAME OF PURCHASER:_____

NAME, ADDRESS AND OFFICE (if applicable)_____ Percentage of Stock_____

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2006-192
JUL 05 2006
ZONING HEARINGS SECTION
MIAMI-DADE PLANNING AND ZONING DEPT.
BY _____

Date of contract:_____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership or trust:

NOTICE: For changes of ownership or changes in purchase contracts after the date of the application, but prior to the date of final public hearing, a supplemental disclosure of interest is required.

The above is a full disclosure of all parties of interest in this application to the best of my knowledge and belief.

Signature: Claudia Fontecilla
Claudia Fontecilla, Vice President

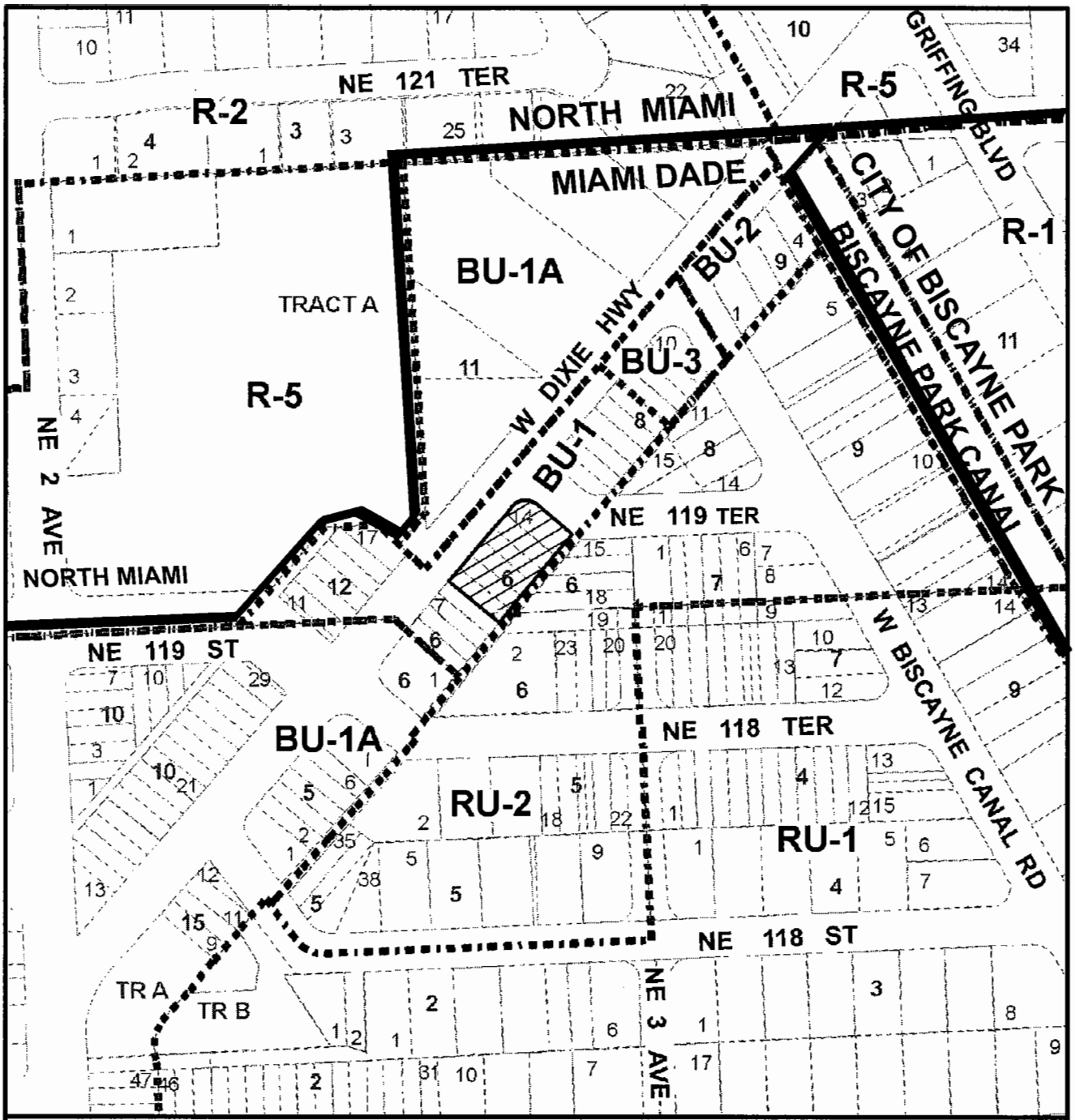
Sworn to and subscribed before me this 29 day of JUNE, 2006. Affiant is personally known to me or has produced as identification.

_____ (Notary Public)

MIGUEL A. GUEVARA
MY COMMISSION # DD 549002
EXPIRES: May 8, 2010
1-800-3-NOTARY FL Notary Discount Assoc. Co.

My commission expires _____

* Disclosure shall not be required of: 1) any entity, the equity interests in which are regularly traded on an established securities market in the United States or another country; or 2) pension funds or pension trusts of more than five thousand (5,000) ownership interests; or 3) any entity where ownership interests are held in a partnership, corporation or trust consisting of more than five thousand (5,000) separate interests, including all interests at every level of ownership and where no one (1) person or entity holds more than a total of five per cent (5%) of the ownership interest in the partnership, corporation or trust. Entities whose ownership interests are held in a partnership, corporation, or trust consisting of more than five thousand (5,000) separate interests, including all interests at every level of ownership, shall only be required to disclose those ownership interest which exceed five (5) percent of the ownership interest in the partnership, corporation or trust.



MIAMI-DADE COUNTY
HEARING MAP

Process Number
06-192

N

SUBJECT PROPERTY

Section: 30,31 Township: 52 Range: 42
Applicant: LIBERTY STATION, INC.
Zoning Board: BCC
District Number: 03
Drafter ID: ALFREDO
Scale: NTS

MIAMI-DADE COUNTY

CREATED ON: 07/13/06

REVISION	DATE	BY
Redo Blast in ARCMAP Redo Blast in Municipality Change Rt. To Rte.	01/18/06 01/22/06 02/07/06	JGURD JGURD KS

MIAMI-DADE COUNTY
AERIAL

Process Number
06-192

N

SUBJECT PROPERTY

Section: 30,31 Township: 52 Range: 42
Applicant: LIBERTY STATION, INC.
Zoning Board: BCC
District Number: 03
Drafter ID: ALFREDO
Scale: NTS

MIAMI-DADE COUNTY

CREATED ON: 07/13/06

REVISION	DATE	BY
Redo Sheet in ARCMAP	01/18/08	JGURD
Redo Sheet in Municipality	01/22/08	JGURD
Change SL To TER.	02/07/08	KS

COMMUNITY ZONING APPEALS BOARD - AREA 8

MEETING OF TUESDAY, OCTOBER 23, 2007

Henry Reeves Elementary School

2005 N.W. 111 Street, Miami, Florida

LIBERTY STATION, INC

(06-192)

Members of the Board

Present

Fredericke Alan Morley, Chair
Richard C. Brown
VonCarol Yvette Kinchens
Vernell Everett
Patrick Cure

Staff

Dennis Kerbel, Assistant County Attorney
Earl Jones, Clerk
Cassandra Henderson, P&Z Hearing Specialist
Cordella Ingram, P&Z Hearing Specialist

On Behalf of the Applicant

Brian Adler, Esq.

I N D E X
SPEAKERS & PAGE NUMBERS

BOARD MEMBERS

Chairman Morley: 3-4, 6-7, 10, 18, 21-28, 33-35, 37-39, 43-47, 49, 51, 53-58.

Board Member Brown: 3, 49-50, 53, 55-57.

Board Member Everett: 3, 51, 56, 58.

Board Member Kinchens: 3, 53, 58.

Board Member Cure: 3, 37, 46-49, 56-58.

1

STAFF

Mr. Kerbel: 47, 49, 54, 56-58.
Mr. Jones: 3, 27, 57-58.
Ms. Henderson: 4, 6.

ON BEHALF OF THE APPLICANT

MR. ADLER: 6-7, 10, 18, 21-22, 39, 44-50, 53, 55-58.

SUPPORTERS:

Mr. Pepper: 23

OBJECTORS

Mr. Millar: 28.
Ms. Gillroy: 35.
Ms. Mangels: 38.

(Thereupon, the following proceedings were had:)

CHAIRMAN MORLEY: At this time we're going to stand for the Pledge of Allegiance.

Council Member Brown, lead us off.

(Pledge of Allegiance).

CHAIRMAN MORLEY: We'll have a moment of silence. All right, thank you.

Staff, you can please call the roll.

MR. JONES: Mr. Brown?

BOARD MEMBER BROWN: Here.

MR. JONES: Mr. Cure?

BOARD MEMBER CURE: Present.

MR. JONES: Mr. Everett?

BOARD MEMBER EVERETT: Here.

MR. JONES: Mr. Johnson?

(No response).

Ms. Kinchens?

BOARD MEMBER KINCHENS: Present.

MR. JONES: Mr. Morley?

CHAIRMAN MORLEY: Here.

MR. JONES: We have a quorum.

CHAIRMAN MORLEY: Thank you.

Those of you who wish to speak, will

you please stand so the court reporter could swear you in at this time.

(Thereupon, all interested individuals seeking to give testimony in the case were duly sworn to tell the truth, the whole truth, and nothing but the truth, after which the following transpired:)

(Thereupon, the Spanish and Creole Interpreters translates to the audience:)

CHAIRMAN MORLEY: Also, all lobbyists should have been registered with the Clerk of the courts prior to this hearing.

(Thereupon, other matters were heard, not related to this case, after which the following transpired:)

CHAIRMAN MORLEY: Staff, would you read the disclaimer at this time.

MS. HENDERSON: "In accordance with the Code of Miami-Dade County, all items to be heard tonight have been legally advertised in the newspaper, notices have been mailed, and the properties have been posted. Additional copies of the agenda are available here at the meeting.

"Items will be called up to be heard by agenda number and name of applicant. The record of hearing on each application will include the records of the Department of Planning and Zoning. All these items are physically present here tonight, available to all interested parties, and available to the members of the Board, who may examine items from the record, during the hearing.

"Parties have the right of cross-examination.

"This statement, along with the fact that all witnesses have been sworn, should be included in any transcript of all or any part of these proceedings.

"In addition, the following departments have representatives present here at the meeting to address any questions: The Department of Public Works, Department of Planning and Zoning and the County Attorney's Office.

(Thereupon, other matters not related to this case were heard, after which the following transpired:)

****

CHAIRMAN MORLEY: Now we're going to go to Item C.

MS. HENDERSON: Liberty Station, Inc. 06-192, 62 protestors, zero waivers.

MR. ADLER: If I may approach, Mr. Chair, I have books to hand out to the Board.

CHAIRMAN MORLEY: Okay, make sure the staff get one first.

MR. ADLER: (Complies).

CHAIRMAN MORLEY: Ladies and Gentlemen, we're going to need to keep it quiet.

Go ahead, sir. State your name and address, for the record.

MR. ADLER: Good evening, Mr. Chair, for the record, my name is Brian Adler. I'm joined here with Alexandra Deas. We're at the law firm of Bilzin Sumberg Baena Price & Axelrod, 200 South Biscayne Boulevard, Suite 2500.

We are here on Application C, which is entitled Liberty Station, Inc., and the application before you is a district

boundary change from BU-1 to BU-1A.

Before we begin with the principal presentation, what I would like to do is go through some housekeeping or procedural matters that occurred prior to the hearing.

When we originally filed the application, if you look on the agenda, there were two requests before you. Prior to the last hearing, we submitted a letter that withdrew the request for the variance, which is Item Number 2. The variance was originally filed with the application to seek a variance to allow a chain link fence and landscaping instead of the required wall. We wrote a letter to staff, and we did withdraw that request.

CHAIRMAN MORLEY: Sir, excuse me, we will have no comments from the gallery, sir.

Go ahead.

MR. ADLER: Additionally, because all we were seeking then is a district boundary change, under the county's code,

we're no longer required to submit a site plan. So we subsequently withdrew our site plan from hearing before you. So what we're left with here today is solely an application with no site plan for a district boundary change from BU-1 to BU-1A.

Now, when we originally filed the application, we did file the application with the site plan, and that site plan depicted a variance. What we submit to you, and we'll be addressing later, is that your decision today should not be based on any particular one use now, because we are seeking a district boundary change from BU-1A, but that the use -- but that the evaluation should occur as to whether BU-1A is the appropriate zoning on this property without regards to any particular use.

I am going to address certain aspects of gasoline stations, and whether they are consistent with the zoning district, and consistent with what the Master Plan and permitted in certain areas, because I know

that there are objectors here who are going to address that.

But in the end, your evaluation, and I'll go into that later, should solely be based on whether the zoning on this property should be BU-1 or BU-1A.

Let me orient you slightly with the property. The property is located on West Dixie Highway. What I've done is, I've taken an aerial and I've combined two sections of West Dixie Highway. This is Northeast 125th, and I basically go from about 135th Street down. This is West Dixie Highway. This is 125th. This orange portion on the property -- on the board represents the property. The property is located about 118th, 119th Street and West Dixie Highway. It consists of a total of .378 acres. It's under half an acre, a little bit more than a third of an acre. As I noted, the property is currently zoned BU-1, and we are seeking BU-1A.

One of the first things to note is that the property is located on West Dixie

Highway. Under Tab 1 of your book that I've handed out, there is a picture of --

CHAIRMAN MORLEY: Excuse me, excuse me. All phones need to be put on vibrate or silence, again, please.

Okay, could I have my Spanish and Creole interpreters interpret that one more time, please to everyone. Sorry about that. All phones need to be on vibrate or silence.

(Thereupon, the Spanish and Creole interpreters translated the above-referred to instructions).

CHAIRMAN MORLEY: Go ahead, sir.

MR. ADLER: Thank you.

Under Tab 1 is a picture of the entire comprehensive plan for Miami-Dade County. And in it is a legend that depicts what are specific items and what are major roadways. The dark, thick lines are depicted as major roadways in Miami-Dade County.

If you turn to Page 2, there is a blowup that shows West Dixie Highway. West Dixie Highway is depicted on your

master plan -- on the county's master plan as a major roadway. One of the only major roadways east of I-95 in this area. So that is quite significant as we go forward.

Some of the other things that I want to point out -- what we've done is, we've put two boards together, and what we've done is we've combined the zoning districts to make it a little easy for the Board to review.

Behind Tab 2 is a blowup of the county's zoning map, but what I'm going to do is, I'm going to go through what these districts are. This is in the City of North Miami. This starts C-1. This light pink area is C-1. Just to the south of that, this is now C-2, which is a heavier commercial district in the City of North Miami. This is C-3, which is the central business district and the intense commercial district in the City of North Miami.

This is West Dixie Highway where I'm running through.

Down here is R-5, which is a small segment that allows multifamily residential. Below that, in Miami-Dade County, we have BU-3 over here, BU-3 -- I'm sorry, BU-2, BU-2, then BU-3, right across the street, BU-1A. This is our property. We're designated BU-1. As you come down this board, it is BU-1A. Again, all the way down. This is West Dixie Highway.

One of the things to note -- and I'm going to bring up gas stations again, because that's a use that's going to come up later -- as of right, gasoline stations are permitted in the BU-1A, BU-2, BU-3 districts, the C-1, C-2 and C-3 districts of North Miami. So starting here, permitted uses are gasoline stations, down West Dixie Highway, right up to just the property north of our property directly across the street where it's BU-1A, and to the south of us where it continues down to BU-1A. Again, that's one of the permitted uses in the district, but it's one use that do want to address, because I know

that's going to be the focus of objection later.

So as you can note from this board, in particular, the BU-1 is an anomaly almost in this area. Everything else is more intense than the BU-1. BU-1A, BU-2, BU-3, C-3, C-2 and C-1 even permits uses that are not permitted in the -- that are permitted in the BU-1A district. And that's the least intense, and that's going over a mile to the north.

So the question is what's the difference between the BU-1 and the BU-1A districts. What I've done is, I've put in tabs in your book, and I've given you the permitted uses. So if you go to tab three, you'll see the BU-1 regulations. If you go to Section 33237 on the bottom, BU-1, "The purpose of the BU-1 neighborhood district is to provide for retail and service convenience facilities which satisfy the essential and frequent needs of the adjacent residential neighborhoods."

BU-1 is often found on smaller roads

in smaller -- in communities, not necessarily on major roadways like West Dixie. So you go through, and BU-1 permits about 40 uses as of right today. Included in those uses is a gasoline -- excuse me, I'm sorry, a convenience store. As of right today on the property, without coming before the Board, without seeking any zoning, we can come forward and do a gas -- I'm sorry, a convenience store on the property, as well as about 39 other uses as of right.

Now, if you go to Tab 4, those are your BU-1A uses. And you go to purposes under 33246. And the purpose says: "The purpose of BU-1A, general business district," but if you look at the title, it's limited business district. That's at the top of -- you look at the top of that page, "is to provide for retail and service convenience facilities, which satisfy the essential and frequent needs of the adjacent residential neighborhood, as well as the more specialized commercial facilities, which may service that whole

neighborhoods."

Well, where does that go? Very often BU-1A is also found in small neighborhoods. What we have is a major roadway. Is BU-1A an appropriate designation on this property? It is absolutely an appropriate designation on this property, because this is a major roadway. This is a roadway that is one of the more traveled roads within the County. It's not just that it's appropriate for BU-1A, as the County has determined in the past right above us. It is appropriate for BU-2 and BU-3 in certain points, as well as the City of North Miami has determined that their essential business district, their more intense designation, has been placed on West Dixie Highway.

I've also provided for you in your books -- and I'm not going to go through each of them. I'm sure you're happy -- with BU-2 and BU-3 uses, because it shows what uses are permitted as a matter of right. Again, our property is right here. Just to the north of our property, this

darker pink, as of right, are permitted, several uses as matter of right. And the BU- 2 on both of these properties are permitted to have liquor package stores, bars and pubs and a whole host -- all the uses that you find listed under the Tab 5 are permitted as a right on those properties.

If you go to Tab 6, those are the BU-3 uses, and, again, that's right here, just to the north of our property. That's for a large-scale commercial activity that permits, as of right, gun shops, dry cleaning establishments, engine service, which is much more intense than the BU-1A uses that we're seeking.

I've provided those for you, if you want to go ahead and look through them.

So, again, the question that we have, and that I'm just going to go over again, is what is the appropriate zoning on West Dixie Highway? What is the significance of West Dixie Highway in being a major roadway?

You've heard arguments before in the

past when people come forward for rezoning for a more intense use, they'll say this is on a section line or half-section line roadway. West Dixie is more than that. It is a major roadway. Most section lines roads or half-section line roads do not reach the status of a major roadway.

The other significance is that this is designated as a state minor arterial roadway, which is more than a collector road. This is a state road. So it's a county roadway, a major roadway on the county map, and it's a minor arterial roadway, a minor arterial state roadway. Again, is BU-1 zoning appropriate for on a major roadway and a state roadway.

Under Tab 7, I've extracted some provisions from the Miami-Dade County comprehensive plan. If you turn to Tab 7, If the traffic circulation system will protect the community and neighborhood integrity.

If you go to TC5C, right out of the County plan, it says: "The county shall discourage thru traffic in neighborhoods

by adequately accommodating thru-traffic demands on arterial roadways."

We are an arterial roadway. If we were to do a gas station, again, one of the many uses under BU-1A, gas stations are transportation and service convenience facilities. They go on major roadways. They go on arterial roadways. That's what's provided for under the comprehensive plan.

CHAIRMAN MORLEY: Okay, we're going to go ahead, and I want to get to the -- give our objectors a chance and give you a chance for rebuttal.

MR. ADLER: I understand, and I'm trying to make a record, if I may, because I know that we do have objectors. I'm going to skip a few parts, because I've got some other provisions where they show that road as a major roadway.

I do want to go through staff's recommendation, because I think staff's recommendation is important, and I'll go quickly through it. But what staff does is, they're the professional body that's

charged with analyzing this -- evaluating this proposed application under the standards.

What they go through is they give you several standards. The first thing that's happened is this application has been reviewed by all the county's required departments. We do not have a single objection. And those objections -- we have no objection from DERM, Public Works, Parks, Miami-Dade Transit, Fire Rescue or Police. This application has been intimately reviewed by those agencies. They've all issued their no objections.

We also had a complete recommendation of approval from the county staff. The county staff evaluates to determine whether this property's rezoning is consistent with the comprehensive plan, and whether it's compatible with the sounding area. And if you look on the recommendation in your hearing kit, on the numbers on the bottom of pages eight and nine, staff has gone through and on four different occasions they have analyzed

this and they have determine on four different occasions that we are consistent with the comprehensive plan and we're compatible with the surrounding area.

How did they evaluate that? There are five standards that they reviewed, and I'm going to -- I'll go very quickly through these five standards.

The first one is, does it conform to the comprehensive plan? The comprehensive plan designates the property as business and office. There's no dispute regarding this. A BU-1A re-designation of rezoning, it's consistent with that.

The second is whether it has a favorable or unfavorable impact on the environmental or natural resources of Miami-Dade County.

If you turn to Page 13 of your -- of the recommendation of the hearing kit, and I'm going by the numbers on the bottom, this has been evaluated by the Department of Environmental Resources Management. They're the body that's charged with evaluating under natural resources. And

they have determined under Section G and Section H of the recommendation that DERM does not object to the application.

The second to the last paragraph of the DERM's memo, which is provided after the Planning and Zoning's recommendation, is this memorandum shall constitute DERM's written approval as required by code. So we meet that criteria.

The development permitted will have a favor or unfavorable impact on the economy. The land is currently undeveloped. This will not have an unfavorable impact on the economy. If you look at the properties that are developed adjacent to the property, the building to the north was built in 1968, and to the north of that, 1953; to the south, 1951, and across the street 1951 and 1957. They're over about a half century old. We would be bringing new development to the area.

CHAIRMAN MORLEY: Okay.

MR. ADLER: So that will have a favorable impact.

CHAIRMAN MORLEY: We have to get out of here.

MR. ADLER: Okay.

CHAIRMAN MORLEY: We have the analysis and everything, so --

MR. ADLER: Okay.

CHAIRMAN MORLEY: We definitely have it.

What we're going to do, I'm going to give them a chance, and you'll definitely have a chance to rebut, but we want to go through and hear this. We have the analysis and everything. We see the staff recommendation.

MR. ADLER: Okay. I have some more presentation. Is it your preference that I present after the objectors proceed?

CHAIRMAN MORLEY: Right. Exactly.

MR. ADLER: Okay.

CHAIRMAN MORLEY: We're going to go ahead and have a -- I'm going to call at this time -- first of all, are there any other supporters for this application? Any supporters for this application, would you please stand. Supporters who wish to

speak in support of this application?

AN AUDIENCE MEMBER: Yes.

CHAIRMAN MORLEY: Okay, state your name and your address, for the record, sir.

MR. PEPPER: Robert Leon Pepper. My address is 302 Northeast 119 Terrace. I have the property right behind the gas station that wants to go up.

A year ago or nine months ago someone puts a note in the door saying we have to protest the gas station because it would cause so much traffic on the side streets, in front of our houses. And this woman who had gave me the paper, I said, "What are you talking about? You don't pull off to buy gas, and say, let's drive around the neighborhood. You pull up, buy gas, and you leave."

I have the same blowup -- satellite blowup, but it's much smaller, which I didn't bring. Between the canal, which is 120 and down to 115, there's only three vacant lots, and all the rest are commercial businesses. So it's not going

to hurt the neighborhood by having another commercial business in there.

I did a lot of homework on this, which a lot of people here didn't. So there's no more traffic. There's three vacant lots.

One of the things they have on their protest is that it creates crime. My house has been broken into twice, and my next-door neighbor -- it's a share complex, was broken into about a month ago where they have an iron gate on the back door. It was pried open, and then the main door was kicked down. So people are violent there now. There's already crime there now.

CHAIRMAN MORLEY: So you're in support of this application?

MR. PEPPER: Yes. Can I give some more reasons why?

CHAIRMAN MORLEY: No, because you're giving rebuttal before I've even heard the objections about that.

MR. PEPPER: Oh, okay. Can I give some things why it should be there?

CHAIRMAN MORLEY: No, you could support it, but you're giving statements in reference to the objections. We haven't heard the objections, yet.

MR. PEPPER: Well, can I give you why I think it should be there?

CHAIRMAN MORLEY: Go ahead. Just finish up. Just go quickly.

MR. PEPPER: All right. Good.

Anyway, the gas prices in that neighborhood range from $2.94 at Chevron to $2.91, today's numbers. Liberty is $2.83. They have a station over on Okeechobee, Opa-Locka and 7th Avenue. They have another one on Miami Avenue and 151. So the prices would be cheaper there. I would save $296 a year on gas.

They have food stores at all their stations, and it's mandatory that they have 15 percent less than their competition in that neighborhood. They're only allowed to jack the price up two cents per gallon over their costs.

These other stations are paying the same thing. Liberty has five tankers, and

four trucks. They deliver to the Liberty -- to the Chevron. They deliver to the Marathon, they deliver to the Hess and they deliver to four other gas stations. So when you're buying gas from these stations, you're not getting their gas, you're getting Liberty Gas -- the same gas that Liberty has.

Let me see. Okay, so, anyway, it's not going to increase any property. You'd be saving your money if you live there to buy off the convenience store, which is open 24 hours.

They talked about the lights and the wasted electricity. When they open up a new Liberty station, it's mandatory you put halogen lamps in there, and if it's a conversion from let's say a Texaco, they have one year to convert over to halogen lights. It's mandatory that they have a sign saying no loitering, no littering. They do not allow benches or chairs for anybody to loiter outside, and it's all well lit. Now, the convenience store, which is two blocks up, she's had 16

violations of people selling drugs out front.

Her other location on --

CHAIRMAN MORLEY: Okay, sir.

MR. PEPPER: So, anyway, it's a safe environment, and they do not allow alcohol or drugs.

CHAIRMAN MORLEY: All right, thank you very much. We're going to wrap this up and go ahead and go on to the next portion.

Thank you very much, sir.

MR. PEPPER: Sure.

CHAIRMAN MORLEY: Are there any objectors to this application? Will you please stand? All objectors, will you please stand. Okay, and only a few will be allowed to speak because of time, so three objectors could come forward and speak in reference to this application.

MR. JONES: Mr. Chair, could they sign the roll?

CHAIRMAN MORLEY: Make sure -- did you all sign?

MR. MILLAR: Yes.

CHAIRMAN MORLEY: Okay.

MR. MILLAR: If we may approach to give you a handout.

CHAIRMAN MORLEY: Make sure you give one to staff first, and then you can pass one up.

MR. MILLAR: Absolutely.

CHAIRMAN MORLEY: All right, sir, state your name and your address, for the record. State your name and address.

MR. MILLAR: My name is George Millar. My address is 11855 West Biscayne Canal Road, Miami, Florida, 33161.

CHAIRMAN MORLEY: Okay, go ahead.

MR. MILLAR: We -- I strongly object to the position of Liberty Gas Station or any gas station at that facility, or any 24-hour business associated at that location for the simple reason -- let me introduce you to our neighborhood. The first picture you see is the property in question. If you'll turn to the next photo, there is a concrete median that was recently constructed by the Florida Department of Transportation in the middle

of West Dixie Highway. We stipulate that West Dixie Highway is a main thoroughfare. It's obvious. There are businesses along that neighborhood -- that area.

If you observe the concrete median, the distance between the concrete median and 119th or 118th Terrace and West Dixie Highway, which is the intersection there just to the -- about the middle of the picture, it have a double median where you cannot turn left, and you cannot cross a concrete barrier.

The only alternative, as the next picture shows, is to make a right-hand turn. If anybody wants to go south or west on 119th Street, they will have to make a right onto the residential street, make a right, which you see the stop sign that says right turn only. That's to northbound West Dixie Highway.

If you go to the next picture, it shows a venue from the residential streets, which that picture is taken looking west from Biscayne Canal Road where the traffic pattern for anyone going

south or west will have to transpire.

The next picture shows the community and the two-lane roadway. This is not a four-lane traffic area. This is a residential roadway.

The next picture shows the same.

It shows you a chronology of the way a vehicle would have to go to get back to a westerly direction or a southerly direction from that property.

As we all know, the gas stations and convenience stores, and things of that nature have a very much high commuter traffic customer venue, which comes in and out.

This next picture shows you the intersection of Northeast 119 Street, 118 Terrace and West Dixie Highway. The building right in the forefront was a former gas station, which is now defunct. It is now an automotive shop.

The grassy area here in front of us in the 1950's and 60's was a gas station. Defunct.

To the middle of the picture, to the

left is Menthy's (phonetic) Auto Repair, formally a Chevron station. Defunct, and is now an automotive repair.

The next picture shows the same issue, however more towards the center left picture is the Exxon station, which is located Northeast 119 Street and Northeast Second Avenue, which has been there for over 50 years, okay? It may have changed ownership, but that gas station has been in existence.

The next picture shows Mama Jennie's, a very good Italian Restaurant. However, back in the 60's and early 70's, it was a gas station. Defunct, closed. It went to a produce market, it went to Penny Electric, and it is now Mama Jennie's.

The last picture here is another gas station located at 116th Street and Northeast Second Avenue. Also defunct, and now currently an automotive repair shop.

Ladies and Gentlemen, we, as members of the community, elect you to protect our communities, to protect our children, to

protect our residence, our property values, things of that nature. That's what we're asking you to do. To protect my three children, this lady's two children, my next-door neighbor who was here, our neighbors who were here at the last meeting, but could not be here, because they have two children, one of which is ill right now, and the father-in-law is in the hospital, so they could not be here tonight, my next-door neighbor who has two small children ages three and five and other children in the community.

There's a lot of pedestrian traffic on West Biscayne Canal Road. There are no sidewalks. This kind of gives you a little glimpse of the actual -- what our community looks like.

Would I like to see new businesses and new buildings up there? Of course. I'd love for the area to be updated and things of that nature. It would be a very nice thing to happen, but not at the cost of the safety of my children, and my wife

and my community.

I have lived in this community for 46 years. That's how I know what all these things were. I used to ride my bicycle as a child through there.

This gentlemen on the end over here has lived in the community for 54 years, 35 years in the present house, which all this traffic will be going in front of.

This young -- this lady here has been in the community also 40 years, where all this traffic will be going in front of.

The lady back here has been there for 23 years.

I have been in my house for 20 years now. It's just getting 20 years, but I've been in the community for 46. I grew up three blocks away.

CHAIRMAN MORLEY: Sir, could you state your address, for the record, please.

MR. MILLAR: Yes, 11855 West Biscayne Canal Road. It's at the intersection of 118th Terrace and West Biscayne Canal Road.

CHAIRMAN MORLEY: Okay.

MR. MILLAR: Ladies and Gentlemen, if you approve this business to be there, you will be changing my community and the residential roadway in front of my home that I've been raising my children for the past 20 years -- well, my kids aren't 20 years old, but you'll be changing that from a residential area where people jog, where people walk, things of that nature, to a commercial thoroughfare like West Dixie Highway.

I stipulate, West Dixie Highway is a major thoroughfare. It is a state road. There is businesses along it. That's obvious. Would I like to see a business here? You all had a great opportunity the last meeting about that school that taught ESE children. That would be a wonderful thing to go there, a business that would be updating the community. Everything would be nice.

CHAIRMAN MORLEY: Okay.

MR. MILLAR: But not a gas station. Not with the traffic and the safety factor

for my children, and for the children of the others in the community.

CHAIRMAN MORLEY: All right, thank you, sir.

MR. MILLAR: Thank you.

CHAIRMAN MORLEY: Second objector.

State your name and your address for the record, please.

MS. GILROY: Teresa Gillroy, 11925 West Biscayne Canal Road.

I would like to draw your attention to the -- let's see, one, two, three, the fourth picture. It has the red car in it, and there's a pink house to the right. I am literally -- if you can get to the fourth picture with the red car. I'm standing in my driveway. It's as though I had the camera right there. Behind me is a beautiful property that's super -- it's absolutely gorgeous. When I came to this neighborhood in 1996, and purchased it that year in November, I thought I had found the most wonderful thing. This is a beautiful working class neighborhood. It's racially and economically mixed.

There's children are all over. They're walking, they're riding bicycles. It's a vital, vital place.

Ecologically, I just wanted to tell you, I've got an owel. We have ducks. We have a beautiful, beautiful ecology back there, and I'm not going to say or state that that may be the most significant thing, but it's very significant to me.

That's me standing in my driveway, and then straight ahead where you see that white sign. That white sign is where the gas station will be. It would change my life dramatically.

I wanted this to be my retirement. I have been a school teacher for 34 years. I was counting on this property to be something that I could live in and age in. And I'm obviously -- I appeal to you to feel me on this one, because it affects me personally very deeply that a gas station with all of its lights, its noise, the smells, the petrol is going to be that close to where I live. I never really counted on it. I wouldn't mind anything

else there. We stipulate this is a major roadway.

We have supported a gas station prior. There's a gas station, Exxon called Blessing (phonetic), and we did not even come to the meeting, because we felt it was just in a perfect position. It's right in the middle of a circle, and there's no egress. It doesn't affect the neighborhood. It's intelligently placed. So we didn't come to protest that gas station, and that's right behind here. It's only a few -- right over the way. So what we find in this application for this variance, we find it to be against our welfare and fundamentally.

CHAIRMAN MORLEY: All right.

MS. GILLROY: Thank you.

CHAIRMAN MORLEY: Thank you very much.

BOARD MEMBER CURE: Excuse me. What was your address, ma'am?

MS. GILLROY: I'm sorry, excuse me, sir. 11925 West Biscayne Canal Road, and it also sometimes appears as drive, but

it's road.

CHAIRMAN MORLEY: Okay, thank you.

And then we're going to hear the last protest, just briefly. If not, I'm going to hear from the rebuttal. Just briefly, ma'am.

State your name and your address, for the record.

MS. MANGLES: I'm Celia Mangels. I live at 350 Northeast 118 Terrace, Miami, Florida 33161. Thank you.

CHAIRMAN MORLEY: We have the gist of the protests, but --

MS. MANGELS: This is really a very nice neighborhood. I know we're close to some of the commercial things, but it's a quiet neighborhood, and it has been. I've lived there for 40 years.

If this gas station is permitted to go where they expect to go -- where they want it to go, there's a concrete grassy barrier that goes from where the bridge comes over the canal, up to the light on 118 Terrace. There is no way anybody going south can get into that drive --

into that gas station unless they go up to the light, break the law, make a U-turn, go back. Or else take a left at the light, go down into a very nice neighborhood with fairly narrow streets, make another left on west Biscayne canal, then come back up on 119th Terrace to get into this gas station. In order to get out of the gas station, they're going to do the same thing in reverse, take a right, a right, and a right, and that puts an awful lot of traffic on 118th Terrace, which is a narrow street.

Ever since the state has permitted this concrete thing to go in, our traffic has gotten much worse on the street as it is. I hate to think if we have a gas station what will happen. We have a lot of young children in the neighborhood. We have wildlife in the neighborhood, and I'm just afraid that we're going to have a real bad time of it if you permit it.

CHAIRMAN MORLEY: All right, thank you very much.

Now we're going to hear from the

attorney now with a rebuttal. Sir, I'm going to ask you to address your concerns, and you get the chance to address your rebuttals, so that we can move on.

MR. ADLER: I will. Thank you, Mr. Chair.

I do want to note I'd gone through, and at the end, staff has made a determination and evaluated that this property and this application is consistent with the master plan and compatible with the surrounding area.

Under Tab 9 in the book that I provided you, there are pictures of the other uses that are on the same block face as our use.

The first picture is the property right next door to this property.

The second picture is a step back, and you can see what's on the property right next door, the lunch wagon and the building.

The red tank again, third property.

The last two pictures are, again, more intense uses that are automobile

repair uses.

We're seeking a rezoning. We're not seeking a variance. We withdrew our variance. The variance is a deviation from the code. A rezoning is to make a determination by this Board as to what is the appropriate zoning on this property. That has been evaluated by the staff.

But I also want to go one step further, and I've provided a copy of this case to your city attorney -- to your county attorney prior to the hearing, and I don't always like to go into case law during the hearings, but I think that this is a very important point.

If you turn to Tab 11, one of the things I want to note is that you're supposed to be evaluating based on the code and the criteria set forth in the code, and not whether or not there are objectors, because what we have is a rezoning. If you go to Tab 11, and you go to the second page of Tab 11 where it's underlined next to the word -- next to the number one, this is a case -- and this is

a governing law. "A property owner is entitled to have his property properly zoned based on the proper zoning concepts without regard to one particular use, which the owner might then intend to make of the various uses permitted under a proper zoning classification. A zoning authority's insistence on considering the owner's specific use of a parcel of land constitutes not zoning, but direct governmental control of the actual use of each parcel of land which is inconsistent with the constitutionally guaranteed private property rights."

What the case and what the code is saying is, we're here before you. We have an application that is for a rezoning. We're not seeking a deviation from the code. We're seeking proper zoning under the county's plan.

There were some statements as to whether they wanted -- one of the objection was whether there could be a 24-hour use. Right now there's nothing in the BU-1 district that we're currently

zoned that limits our use to anything other than 24 hours. We can have a 24-hour use, as can all the properties going down West Dixie Highway. We are not limited, nor are they.

Again, I want to point out that gas stations, because that's the use that's being objected, are permitted everywhere that I'm highlighting. It skips there, then here, here and down, including the property directly across the street from us.

We submit to you that if you evaluate the criteria that has been provided to you by the law and by the code, the question -- and the only question is whether West Dixie Highway is appropriately designated as BU-1, or BU-1A or more intense.

I think there is one gentlemen who spoke earlier also wants to make one point regarding turning left from the property, if I may.

MR. PEPPER: Actually, there's a couple things I'd like to say. I make a

U-turn at the end of the island they're talking about every day of the week.

CHAIRMAN MORLEY: Sir, you need to state your name and your address for the record.

MR. PEPPER: Robert Leon Pepper, 302 Northeast 119 Terrace.

The island they're talking about is right in front of BFW (phonetic). I make a U-turn there every day of the week, because I live on 119 Terrace, which is the corner here. You do not have to go down any side streets.

I'm 73. These people here are between 50 and my age. None of them have kids. I've never seen kids in that neighborhood.

MR. ADLER: Wait a minute.

MR. PEPPER: And her ducks are a pain in the butt.

CHAIRMAN MORLEY: You're going to have to sit down while he's speaking.

MR. PEPPER: Her ducks are a pain in the butt. You have to stall and stop and get loud and shoo the ducks away.

CHAIRMAN MORLEY: All right.

MR. PEPPER: They're the nuisance.

CHAIRMAN MORLEY: All right, listen up, listen up.

State your name and address, for the record, sir. State your name and address, for the record. You.

MR. PEPPER: Me?

CHAIRMAN MORLEY: Yes, sir.

MR. PEPPER: Oh, Robert Leon Pepper.

CHAIRMAN MORLEY: And your address again.

MR. PEPPER: 302 Northeast 119th Terrace.

CHAIRMAN MORLEY: Okay.

MR. PEPPER: Right behind where the station should be.

CHAIRMAN MORLEY: Mr. Attorney, we're going to need you to finish your rebuttal sir, and I appreciate that, but I'll need you to finish your rebuttal, sir, so we can move on.

MR. ADLER: In the interest of time, I will concede that there are children in the neighborhood, that doesn't have to be

objected to. Every neighborhood has some children, so I'm not making a statement that there are no children.

AN AUDIENCE MEMBER: There are many.

MR. ADLER: In conclusion, we are -- this application has been evaluated by your professional staff and every department. It's been determined to be consistent with the master plan, compatible with the surrounding area, and those are the standards that you should be evaluating under, and not necessarily whether there are objectors or not.

We, therefore, request your approval of the application for a district boundary change.

CHAIRMAN MORLEY: We heard that, sir.

At this time, we're going to close the public portion, and I want to have discussion by the Board members at this time.

Council members, you've heard the request. You've heard the opposition from the neighbors. Any questions?

Council Member Cure.

BOARD MEMBER CURE: First question for our staff. Does it require that he get a new application, because he's seeking approval, although he withdrew his site plan or something? He has to generate a new application?

MR. KERBEL: No, he doesn't need a new application. The Board would have to decide whether to accept his withdrawal of that request, because he's no longer requesting a variance from the wall requirements. The site -- staff can no longer require him to submit a site plan.

BOARD MEMBER CURE: Okay.

MR. KERBEL: That's all that meant.

BOARD MEMBER CURE: Okay.

MR. ADLER: If I may, we addressed that with staff when I met with staff. Staff was okay with our -- we met with staff. We withdrew actually before we came to hearing.

CHAIRMAN MORLEY: Okay, we got you. Go ahead, Councilman Cure.

BOARD MEMBER CURE: Have you ever sat down with the protesters to try to resolve

the situation?

MR. ADLER: I called -- there was a petition that had been signed. And the petition, I would also like to object to, because what it -- what it states is that --

BOARD MEMBER CURE: No. Did you ever sit down with them?

MR. ADLER: I tried. I made a few calls. At the last hearing I was told unequivocally, "We do not want to meet with you," period.

I said we were seeking the wall, because one of the things certain neighborhoods want is, instead of a wall, they prefer a chain link fence with landscaping. So that was why we requested a variance.

"We don't want landscaping, and we don't want to meet with you."

At the last hearing when there was a deferral, I tried to reach out to certain people, and I came up to the microphone, and I said, "I understand that certain of you do not want to meet, but if there's

anyone there that would like to meet, I'm interested in meeting with you. I'd like to see if we can address any concerns."

"We do not want to meet with you."

I then went up and individually gave some people my cards. I said, "If you're interested in meeting, we may be able to make some accommodations."

"We do not want to meet with you." That was the message.

BOARD MEMBER CURE: Okay, thank you.

CHAIRMAN MORLEY: That's closed. We're moving forward.

For the record, application request number two has been withdrawn; am I correct?

MR. ADLER: Yes.

MR. KERBEL: Sorry, Mr. Chair. Technically, if I may, it's for the Board to decide whether you want to accept the withdrawal.

CHAIRMAN MORLEY: Right, but the applicant is no longer seeking that --

MR. KERBEL: That's correct.

CHAIRMAN MORLEY: -- request number

two. The only thing we're considering right now, Council members, is going from BU-1 to BU-1A.

Council Member Brown?

BOARD MEMBER BROWN: Page 851, first paragraph that he quoted earlier?

MR. ADLER: Yes.

BOARD MEMBER BROWN: It says, "A property owner is entitled to have his property properly zoned based on proper zoning concepts."

What lead you to believe that this isn't properly zoned?

MR. ADLER: This is not properly zoned. As evaluated by staff, this is zoned BU-1. BU-1 is a very limited type of commercial use that is not proper on major roadways. On major roadways is where you have your more intense zoning. This property is not properly zoned as BU-1, because all the other properties are mostly designated as BU-1A, BU-2 or more intense as you go up to the north.

BOARD MEMBER BROWN: So it's your belief that -- is it your belief that

staff erred in their zoning?

MR. ADLER: No. As things are rezoned -- sometimes the zoning goes back to the 1950's. A lot of these applications have been rezoned over time. In your book, which I didn't get a chance to go through, but there were some -- I put in some resolutions where the properties to the north had been rezoned many years ago. Over time -- and sometimes, there's a correct -- that's why applications come forward for a rezoning, because the zoning on the property is not the appropriate zoning. Sometimes properties are zoned commercial, and they should be residential. In this case, on a major roadway and on a state arterial roadway, the BU-1 zoning is the minimal zoning that can be -- is not consistent. The uses that are permitted in the BU-1A districts are more compatible with the major roadways and the state arterial roadways.

CHAIRMAN MORLEY: Okay, we're going to have to move forward.

Counsel Member Everett, this is your area.

BOARD MEMBER EVERETT: Yes. I believe that these people here, who have invested most of their lives in that neighborhood, they should be heard. And you guys don't seem to have gotten together and come up with some kind of an agreement. A home, a family, the security for that home and family is very, very important, and I have to consider the people that live in that neighborhood, which this business will impact, will impact heavily.

So I have to -- as you tend to say, it's not about the objectors. Yes, it is about the objectors, too, because they have an investment in that neighborhood, one of the greatest investments, and maybe the largest investment of their lives. So we would have to look at it from the people who live there, from their point of view.

The lady standing in her driveway facing a service station -- I know what a

service station is, and everybody else knows, too. So we have to consider the wishes of the people who also have an investment in the neighborhood, a great investment. There is one gentleman here who has been living there for 50 years, I think.

AN AUDIENCE MEMBER: Fifty-five.

AN AUDIENCE MEMBER: Forty-six.

CHAIRMAN MORLEY: Okay.

MR. ADLER: Council members, if I may respond to that?

CHAIRMAN MORLEY: No, because the public portion is closed. We're not going to go into any discussion. I want to hear from the Council members at this time.

MR. ADLER: Okay.

CHAIRMAN MORLEY: Council member Kinchens, any questions?

BOARD MEMBER KINCHENS: (Indicating).

CHAIRMAN MORLEY: Council Member Brown, do you have any questions?

BOARD MEMBER BROWN: No questions.

CHAIRMAN MORLEY: Council member --

MR. ADLER: If you can seek guidance

from your counsel on that point, if I may, just because it's contrary to -- the zoning by majority is contrary to the law that should be evaluated today.

CHAIRMAN MORLEY: Right. We understand that, and we're going to hear from the attorney.

MR. KERBEL: You want me to address that last point?

CHAIRMAN MORLEY: Yes, sir.

MR. KERBEL: The Board is, of course, supposed to take into consideration whether the application is compatible with the neighborhood. And the neighbors have testified as to what the neighborhood is like. That's properly a consideration before this Board.

As for the point about the case saying that you can't take into consideration any single use, the one thing I would offer this Board as guidance is, while maybe we shouldn't be arguing specifically about a gas station, the Board can certainly consider the intensity of the mix of uses that are allowed in the

BU-1A category, and whether that intense -- more intense mix of uses is compatible or not with the area where this property is located.

CHAIRMAN MORLEY: Okay, thank you very much.

The public portion is closed. We're going to have discussions, and then we're going to call for the vote.

Any other questions?

We heard from the applicant and the residents, we heard rebuttal, and we've heard from our staff attorney.

Council members? Council Member Brown, any other questions?

BOARD MEMBER BROWN: Question.

CHAIRMAN MORLEY: Any other questions?

BOARD MEMBER BROWN: How do you envision the quality of life effect on that neighborhood?

MR. ADLER: When I tried to reach out, I was told that we didn't want the convenience store -- oh, I believe that developing the property, and developing in

the area will improve the quality of life. Rezoning it to BU-1A affords additional uses that are permitted elsewhere on the street. By rezoning it, it's going to precipitate new development, and new growth, and that's one of the criteria that you are looking to evaluate under.

CHAIRMAN MORLEY: All right. Thank you very much.

Any other questions, Council members?

If not, we're going to have to ask for a vote. We're going to have to move forward.

If there are no other questions, I'd like to obtain a motion.

BOARD MEMBER BROWN: I move --

CHAIRMAN MORLEY: Council Member Brown.

BOARD MEMBER BROWN: I move that BU-1 remain as it is.

MR. KERBEL: So is that a motion to deny the application?

BOARD MEMBER BROWN: To deny, yes.

CHAIRMAN MORLEY: Motion to deny the application by Council Member Brown.

BOARD MEMBER CURE: Second.

BOARD MEMBER EVERETT: I'll second.

BOARD MEMBER CURE: I second that motion without prejudice at this time, that we accept that denial.

MR. KERBEL: I'm sorry, was that without prejudice?

BOARD MEMBER CURE: Without prejudice.

CHAIRMAN MORLEY: Motion to deny the application without prejudice.

MR. KERBEL: Sorry, one clarification. To accept the withdrawal of the request for the variance?

CHAIRMAN MORLEY: To accept the withdrawal.

MR. KERBEL: So it would be deny Number 1, and accept withdrawal of Number 2.

CHAIRMAN MORLEY: Exactly.

MR. KERBEL: Without prejudice.

CHAIRMAN MORLEY: Without prejudice.

Motion by Council Member Brown, and seconded by Council Member Cure.

Staff, would you please call for the

vote.

MR. JONES: Yes. Motion to withdraw Item Number 2, and motion to deny Item Number 1 without prejudice.

BOARD MEMBER CURE: Exactly.

MR. JONES: Mr. Brown?

BOARD MEMBER BROWN: Yes.

MR. JONES: Mr. Cure?

BOARD MEMBER CURE: Yes.

MR. JONES: Mr. Everett?

BOARD MEMBER EVERETT: Yes.

MR. JONES: Ms. Kinchens?

BOARD MEMBER KINCHENS: Yes.

MR. JONES: Mr. Morley?

CHAIRMAN MORLEY: Yes.

MR. JONES: Motion passed unanimously.

MR. ADLER: Mr. Chair, thank you for your time.

CHAIRMAN MORLEY: All right, thank you very much, sir.

BOARD MEMBER CURE: Thank you, too.

AN AUDIENCE MEMBER: Can I say something? What does that mean?

CHAIRMAN MORLEY: The attorney will

tell you what that means.

AN AUDIENCE MEMBER: Okay, thank you.

MR. KERBEL: It means that the Board agreed with you all, and the application has been denied.

AN AUDIENCE MEMBER: Okay, thank you very much.

(Thereupon, the proceeding was concluded:)

CERTIFICATE OF OATH

STATE OF FLORIDA)
SS)
COUNTY OF MIAMI-DADE)

I, Jannett Taylor-Brown, Court Reporter and Notary Public in the State of Florida, certify that all witnesses personally appeared before me on this 23rd day of October, 2007, and were duly sworn.

JANNETT TAYLOR-BROWN, FPR
Florida Professional Reporter
Notary Public, State of Florida
My Commission # DD497961
My Commission Expires: 12-27-2009

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
SS:
COUNTY OF MIAMI-DADE)

I, Jannett Taylor-Brown, Court Reporter and Notary Public in the State of Florida, do hereby certify that a meeting was held before Community Zoning Appeals Board 8 on October 23, 2007; and that Item Number 06-192, LIBERTY STATION, INC was heard; and that the foregoing pages, numbered 1 to 59, inclusive, constitute a true and correct transcript of my stenographic notes.

WITNESS my hand in the City of Miami, County of Dade, State of Florida, this 30th day of November 2007.

JANNETT TAYLOR-BROWN
COURT REPORTER

COMMUNITY ZONING APPEALS BOARD 8
HENRY REEVES ELEMENTARY SCHOOL
2005 NW 111 Street, Miami
Wednesday, September 19, 2007 @ 7:00 p.m.

ITEM

LIBERTY STATION, INC.
(06-192)

Members of the Board
(Present)

Vernell Everett, Chairman
Fredericke Alan Morley, Vice Chairman
Patrick Cure
VonCarol Yvette Kinchens
Richard C. Brown

County Attorney's Office

Dennis Kerbel
Assistant County Attorney

Staff

James Murphy, Zoning Evaluator
Cassandra Henderson, Zoning Specialist
Earl Jones, Clerk
Cleveland Thompson, P& Z Coordinator's Office

On Behalf of the Applicant
Brian Adler, Esq.

I N D E X

BOARD MEMBERS

CHAIRMAN EVERETT: 3-16.

VICE CHAIRMAN MORLEY: 3, 13, 14.

BOARD MEMBER CURE: 3, 14.

BOARD MEMBER KINCHENS: 3.

BOARD MEMBER BROWN: 3.

STAFF

MS. HENDERSON: 5-6, 13, 15.

MR. KERBEL: 7-8, 12-13, 15-16.

MR. THOMPSON: 10.

ON BEHALF OF THE APPLICANT

MR. ADLER: 9-12.

OBJECTORS

UNIDENTIFIED SPEAKERS: 7-16.

CHAIRMAN EVERETT: Good evening, Ladies and Gentlemen. I call Community Council 8 to order September 19, 2007.

Could we stand for the Pledge of Allegiance, please.

(Pledge of Allegiance).

CHAIRMAN EVERETT: Ladies and Gentlemen, due to the size of the crowd tonight, if your application is not up for consideration, all of you standing, I will ask you to move to the outside and you will be called when your application comes up for the hearing. And please turn the cellphones off.

And this is for the attorneys: If you have some discussion, we'd rather you step outside or somewhere and discuss it quietly.

And in a few minutes, we'll get started, but we got a lot of applications tonight. We wish you guys would make your presentation as precise and short as you possibly can, because this is only the way for us to be fair.

So there will be no standing. And

anybody that's standing, please wait outside until your application is called.

Thank you.

Staff, will you please call the roll.

THE CLERK: Yes.

Mr. Brown?

COUNCILMAN BROWN: Here.

THE CLERK: Mr. Cure?

BOARD MEMBER CURE: Here.

THE CLERK: Mr. Johnson?

Ms. Kinchens?

BOARD MEMBER KINCHENS: Here.

THE CLERK: Mr. Morley?

VICE CHAIRMAN MORLEY: Here.

THE CLERK: Mr. Everett?

CHAIRMAN EVERETT: Here.

THE CLERK: We have a quorum.

CHAIRMAN EVERETT: And those of you present, who wish to speak today, must stand and the court reporter will swear you in. Stand up. And those of you that's leaving will have to return. You will have to be sworn in later.

(Thereupon, interested individuals seeking to present testimony in these

proceedings were duly sworn to tell the truth, the whole truth and nothing but the truth, after which the following transpired:)

CHAIRMAN EVERETT: Anyone present tonight, who wishes to withdraw or defer an application, please come forward at this time and state your name and address, for the record.

Hearing none, would you --

MS. HENDERSON: "In accordance with the Code of Miami-Dade County, all items to be heard tonight have been legally advertised in the newspaper, notices have been mailed and the properties have been posted. Additional copies of the agenda are available here at the meeting. Items will be called up to be heard by agenda number and name of applicant.

"The record of the hearing on each application will include the records of the Department of Planning & Zoning. All these items are physically present tonight, available to all interested parties and available to the Members of

the Board, who may examine items from the record during the hearing.

"Parties have the right of cross-examination.

"This statement, along with the fact that all witnesses have been sworn, should be included in any transcript of all or any part of these proceedings.

"In addition, the following departments have representatives present here today at the meeting to address any concerns: The Department of Public Works, the Department of Planning & Zoning and the County Attorney's Office."

CHAIRMAN EVERETT: Thank you.

And I repeat, that we will -- we got a large agenda tonight. We must move forward and we want to do that being fair to everybody. Please respect that.

And if I call you, if I ask you to summarize, and you're presenting your case, please summarize so we can move forward.

Thanks.

* *

(Thereupon, unrelated matters were heard by the Board, after which the following transpired:)

MR. KERBEL: Mr. Chair, Mr. Chair.

THE REVEREND: Wait a minute. Staff, I just wanted to say thank you so much. Thank you.

MR. KERBEL: We have to be out of here by 10:00 o'clock. I don't think it's possible to do any of these other -- the remaining applications in 10 minutes.

UNIDENTIFIED SPEAKER: Excuse me. We've been here all night long.

(Everyone from the audience speaking simultaneously).

CHAIRMAN EVERETT: Ladies and Gentlemen, will you please exit quietly, because we still got --

MR. KERBEL: Okay, Mr. Chair, I'm --

CHAIRMAN EVERETT: Yes, please. Took up all the time.

MR. KERBEL: Mr. Chair, if I may, the people remaining in the -- remaining in the audience, what application are you here for? Are you all --

UNIDENTIFIED SPEAKER: Liberty Station.

MR. KERBEL: All here for Liberty station? Mr. Chair, I think in 10 minutes, at the very least, we could let the objectors who are here make their record and we could have it transcribed for the next meeting.

UNIDENTIFIED SPEAKER: We would like a decision on the matter.

MR. KERBEL: That I don't know if it's going to be possible, because we got to be out of here.

UNIDENTIFIED SPEAKER: I think the School Board would allow a little extra time.

MR. KERBEL: We're already one hour beyond what the School Board -- what our contract with the School Board allows. We -- this is in the discretion of the Chair. I think maybe you can make a record.

UNIDENTIFIED SPEAKER: I think there can be a decision, sir. This is --

CHAIRMAN EVERETT: We are losing minutes the longer you talk.

MR. ADLER: Mr. Chair, before we begin --

CHAIRMAN EVERETT: Liberty Station. What do we got, no objectors?

MR. ADLER: No, actually that's why I'm here. We actually -- the people that are here are the objectors. And if you have to be out within a certain amount of time -- we do have a presentation to make.

My name is Brian Adler, for the record, law offices at Bilzin Sumberg, 200 South Biscayne Boulevard.

I do understand there are numerous objectors here. I did reach out to a few objectors, and I was told that they did not want to meet.

I do have a presentation to make, but if this is going to be deferred, what I would like to do is place my name on the record and actually meet with the objectors between --

UNIDENTIFIED SPEAKER: No.

MR. ADLER: That was the response I had received in the past, that we do not want to meet.

UNIDENTIFIED SPEAKER: Please allow me. I'm the actual individual that circulated the petition. Please allow me to speak. On their behalf, I have to say this. That is slightly disingenuous.

CHAIRMAN EVERETT: Whoa, whoa, whoa!

MR. THOMPSON: Mr. Chair.

UNIDENTIFIED SPEAKER: We were contacted last week, sir.

CHAIRMAN EVERETT: Okay, we've got to defer.

MR. THOMPSON: We have to be out of here 10:00 o'clock.

UNIDENTIFIED SPEAKER: We were contacted last week, sir.

CHAIRMAN EVERETT: Let's defer this item right now. Let's defer the whole thing now, because we're not going to get anywhere here tonight.

MR. ADLER: Mr. Chair, if you're going to defer, may I have the indulgence of placing my name and number, so that -- because I did contact certain people.

UNIDENTIFIED SPEAKER: Last week, sir, last week. Disingenuous.

MR. ADLER: It was in late August.

CHAIRMAN EVERETT: Ma'am, ma'am.

MR. ADLER: Mr. Chair, I did contact people in late August. I understand this young lady does not want to meet.

CHAIRMAN EVERETT: Would you excuse me.

MR. ADLER: Sir.

CHAIRMAN EVERETT: There's no way we're going to hear this application with what's going on here now. We won't even get started.

MR. ADLER: What I'm requesting, Mr. Chair, is that -- I understand she does not want to meet.

CHAIRMAN EVERETT: Whatever you do outside of here. What we're doing here is just deferring the application to our next zoning meeting.

MR. ADLER: If I could give my name and number on the record for those who may want to meet.

CHAIRMAN EVERETT: All you have to do is say it and it will be recorded.

MR. ADLER: Okay. My name is Brian Adler. My phone number is (305) 350-2351. I'm an attorney at Bilzin Sumberg.

For those of you who are available to meet, I would love to meet with you on the application. I did try to reach out to certain people who had circulated the petition. I was told we do not want to meet. If there are people that do want to meet, I am available and I would like to meet with you to go over the application. I will be outside. I will give you my card and I will meet at a time and a place that is convenient for you.

Thank you, Mr. Chair.

UNIDENTIFIED SPEAKER: Mr. Chair, I beg your pardon, sir, and I think the School Board would be indulgent enough based on this is a community activity for people that are here.

CHAIRMAN EVERETT: Sir.

UNIDENTIFIED SPEAKER: Yes, sir.

MR. KERBEL: I'm sorry, Mr. Chair, I'm going --

CHAIRMAN EVERETT: State your name

and address, but we're going to defer this. We won't hear this application.

MR. KERBEL: Yeah, Mr. Chair, I just want to chime in. Whether the School Board -- whether the School Board would indulge us or not, we have a contract with the School Board. We're already an hour over. We don't want to risk losing this space in the future.

CHAIRMAN EVERETT: And this is all I was talking about earlier. To be fair to everybody, we got to move forward. We had a heavy agenda tonight. It's nobody's fault. So we have to deal with reality as is, not as we wish it to be. That's all I'm saying.

UNIDENTIFIED SPEAKER: Will it be reset? To what date?

UNIDENTIFIED SPEAKER: Mr. Chair, what date will it be reset on?

MS. HENDERSON: October 23rd.

VICE CHAIRMAN MORLEY: October 3rd?

MS. HENDERSON: October 23rd.

VICE CHAIRMAN MORLEY: Mr. Chair, I'd like to --

UNIDENTIFIED SPEAKER: What if we can't be here on October 3rd? We all made arrangements to be here this evening.

VICE CHAIRMAN MORLEY: Mr. Chair, I'd like to make a motion that we defer this application to October 23rd.

CHAIRMAN EVERETT: I need a second. Second?

BOARD MEMBER CURE: Seconded.

CHAIRMAN EVERETT: Moved and second to defer this application to October 23rd.

UNIDENTIFIED SPEAKER: Excuse me, excuse me, Mr. Chair, Mr. Chair.

Just like Ms. Maynard (phonetic) here said, who is also intimately impacted by this issue, we need to be first on the agenda. There was attorneys that blew this whole thing up that were given 20 and 30 minutes, and the first thing on the agenda was given over an hour.

CHAIRMAN EVERETT: Why would you want to be first the next time as long as you're heard?

UNIDENTIFIED SPEAKER: No, sir. Because we don't have to wait here for

four hours like we did tonight.

CHAIRMAN EVERETT: How many more applications?

UNIDENTIFIED SPEAKER: Excuse me. We're being deferred today.

MS. HENDERSON: It was just them two, but they will be current. Will be the first one heard.

CHAIRMAN EVERETT: Okay, you'll be the first one heard.

UNIDENTIFIED SPEAKER: Thank you, thank you.

MR. KERBEL: But I just -- Mr. Chair, Mr. Chair, if I may. I need everyone in the room to be aware this is the only notice that you're going to receive about this application being heard at the next zoning hearing.

UNIDENTIFIED SPEAKER: That's not unfair (sic) to the people in the community, sir.

MR. KERBEL: You can feel free to file whatever legal challenges you feel are appropriate, but it's not illegal. I'm giving you notice right now.

Please, please, if I may, the next meeting is October 23rd at 7:00 p.m. It will be in this room again. The hearings for this Board are always at this location.

UNIDENTIFIED SPEAKER: The next thing I request -- excuse me, Mr. Chair, the next we request also is that we have the same opportunity that the attorneys have.

CHAIRMAN EVERETT: You got it.

UNIDENTIFIED SPEAKER: Okay, thank you very much, sir.

CHAIRMAN EVERETT: Meeting adjourned.

(Thereupon, the meeting was adjourned).

CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF DADE)

I, Lorena Ramos, Notary Public, State of Florida, certify that all witnesses personally appeared before me on this 19th day of September 2007 and were duly sworn.

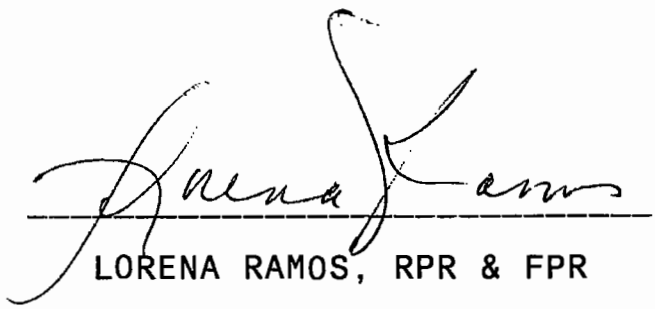
LORENA RAMOS, NOTARY PUBLIC
STATE OF FLORIDA

LORENA RAMOS
MY COMMISSION # DD 541573
EXPIRES: May 2, 2010
Bonded Thru Notary Public Underwriters

CERTIFICATE OF REPORTER

I, Lorena Ramos, National Registered Professional Reporter and Florida Professional Reporter, do hereby certify that I was authorized to and did report the foregoing proceedings, and that the transcript, pages 1 through 17, is a true and correct record of my stenographic notes.

DATED this 20th day of November 2007 at Miami-Dade County, Florida.



LORENA RAMOS, RPR & FPR

COURT REPORTER

Received by
Zoning Agenda Coordinator
JAN 2 8 2008

Liberty Station, Inc.
Item # 1
Hearing # 06-192

This instrument was prepared by:
Brian S. Adler, Esq.
Bilzin Sumberg Baena Price & Axelrod LLP
200 South Biscayne Boulevard, Suite 2500
Miami, Florida 33131-5340

(Space reserved for Clerk)

DECLARATION OF RESTRICTIONS

This Declaration of Restrictions ("Declaration") is made and entered into this ___ day of January, 2008, by Liberty Station, Inc., a Florida corporation ("Owner"), with an address of 12305 S. Dixie Highway, Miami, Florida 33156, as Owner of the property more particularly described on Exhibit "A" (the "Property").

IN ORDER TO ASSURE the County that the representations made by the Owner during consideration of Public Hearing No. 06-192 ("Application") will be abided by, the Owner freely, voluntarily and without duress, Owner makes the following declaration of restrictions ("Declaration") covering and running with the Property:

(1) **Restrictions.**

(a) The hours of operation of commercial development on the site shall be no earlier than 5 am and no later than 12 am.

(b) Owner shall place a sign "No Right Turn" or the functional equivalent on the Property limiting any proposed egress onto NE 119th Terrace.

(c) Owner shall provide additional landscaping such that trees on the rear (east side) of the Property are planted twenty (20) feet on center.

(2) **County Inspection.** As further part of this Declaration, it is hereby understood and agreed that any official inspector of the County, or its agents duly authorized, may have the privilege at any time during normal working hours of entering and inspecting the use of the premises to determine whether or not the Owner is complying with the requirements of the zoning regulations and the conditions in this Declaration.

(3) **Covenant Running with the Land**. This Declaration on the part of the Owner shall constitute a covenant running with the land and shall be recorded, at Owner's expense, in the public records of the County and shall remain in full force and effect and be binding

upon the undersigned Owner, 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 Property and for the benefit of the County and the public welfare. Owner acknowledges that acceptance of this Declaration does not in any way obligate or provide a limitation on the County.

(4) **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) 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 the County.

(5) **Modification, Amendment, Release**. This Declaration 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 all of the Property, including joinders of all mortgagees, if any, provided that the same is also approved by the Board of County Commissioners or Community Zoning Appeals Board of Miami-Dade County, Florida, whichever by law has jurisdiction over such matters, after public hearing.

Should this Declaration be so modified, amended or released, the Director of the Miami-Dade County Department of Planning and Zoning, or the executive officer of the successor of such Department, or in the absence of such director or executive officer by his assistant in charge of the office in his absence, shall forthwith execute a written instrument effectuating and acknowledging such modification, amendment or release.

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

(7) **Authorization for the 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 Owner complies with this Declaration.

(8) **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.

(9) **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.

(10) **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

(11) **Recording**. This Declaration shall be filed of record in the public records of the County, at Owners expense following the final 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, 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, and upon written request, the Director of the Department of Planning and Zoning or the executive officer of the successor of said department, or in the absence of 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.

(12) **Acceptance of Declaration.** 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 and/or any appropriate Community Zoning Appeals Board retains its full power and authority to deny each such application in whole or in part and to decline to accept any conveyance or dedication.

(13) **Owner.** The term Owner shall include the Owner, and its heirs, successors and assigns.

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

LIBERTY STATION, INC.,
a Florida corporation

BY: Claudia Fontecilla
Claudia Fontecilla, Vice President

STATE OF FLORIDA }
ss:
COUNTY OF MIAMI-DADE }

The foregoing instrument was acknowledged before me this 16 day of January, 2008, by Claudia Fontecilla, who is personally known to me or produced a valid driver's license as identification

Notary Public
Sign Name: Yvette Caponi
Print Name: Yvette Caponi
MY COMMISSION EXPIRES: September 27, 2010

YVETTE CAPONI NOTARY PUBLIC STATE OF FLORIDA
My Comm. Expires September 27, 2010
No. DD 599598

MORTGAGEE JOINDER

The undersigned, US Century Bank, a Florida banking corporation, Mortgagee under that certain mortgage described below, covering the Property described in the foregoing Declaration of Restrictions, does hereby acknowledge that the terms of the below-described instrument shall be subordinate and inferior in all respects to the terms of the Declaration.

That certain Florida Real Estate Mortgage, Assignment of Leases and Rents and Security Agreement given by Liberty Station, Inc. in favor of US Century Bank, dated June 9, 2006 and recorded June 22, 2006 in Official Records Book 24658, Page 273 of the Public Records of Miami-Dade County, Florida.

IN WITNESS WHEREOF, the undersigned mortgagee has caused these presents to be executed as of this 14 day of January, 2008.

Witnesses:

Jessica Medina
Signature
Jessica Medina
Print Name

Signature
Eddie Diaz
Print Name

US CENTURY BANK, a Florida banking corporation

By: _____
Name: Jorge F. Hernandez
Title: Senior Vice President

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing Mortgagee Joinder by Mortgagee Corporation was acknowledged before me this 14th day of January, 2008, by JORGE F. Hernandez, as SVP of US Century Bank, a Florida banking corporation, on behalf of said corporation. He/She is personally known to me or has produced _____ as identification.

MARIA ELENA ESCOBEDO
MY COMMISSION # DD 639692
EXPIRES: February 13, 2011
Bonded Thru Notary Public Underwriters

Name: Maria E. Escobedo
Notary Public, State of Florida
Commission No.: _____

EXHIBIT "A"

LEGAL DESCRIPTION:

LOTS 9, 10, 11, 12, 13 AND 14, BLOCK 6 OF
"BELLEVUE BISCAYNE" ACCORDING TO THE PLAT
THEREOF AS RECORDED IN PLAT BOOK 17 AT PAGE 29
OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA

Received by
Zoning Agenda Coordinator
FEB 06 2008

Liberty STATION, INC
ITEM # 1
HEARING # 06-192

This instrument was prepared by:
Brian S. Adler, Esq.
Bilzin Sumberg Baena Price & Axelrod LLP
200 South Biscayne Boulevard, Suite 2500
Miami, Florida 33131-5340

(Space reserved for Clerk)

DECLARATION OF RESTRICTIONS

This Declaration of Restrictions ("Declaration") is made and entered into this ___ day of January, 2008, by Liberty Station, Inc., a Florida corporation ("Owner"), with an address of 12305 S. Dixie Highway, Miami, Florida 33156, as Owner of the property more particularly described on Exhibit "A" (the "Property").

IN ORDER TO ASSURE the County that the representations made by the Owner during consideration of Public Hearing No. 06-192 ("Application") will be abided by, the Owner freely, voluntarily and without duress, Owner makes the following declaration of restrictions ("Declaration") covering and running with the Property:

(1) **Restrictions.**

(a) The hours of operation of commercial development on the site shall be no earlier than 6 am and no later than 12 am.

(b) Owner shall place a sign "No Right Turn" or the functional equivalent on the Property limiting any proposed egress onto NE 119th Terrace.

(c) Owner shall provide additional landscaping such that trees on the rear (east side) of the Property are planted twenty (20) feet on center.

(d) Lighting on the property shall be recessed lights and otherwise be designed to minimize overspill of lighting onto adjacent residential properties.

(2) **County Inspection.** As further part of this Declaration, it is hereby understood and agreed that any official inspector of the County, or its agents duly authorized, may have the privilege at any time during normal working hours of entering and inspecting the use of the premises to determine whether or not the Owner is complying with the requirements of the zoning regulations and the conditions in this Declaration.

(3) **Covenant Running with the Land**. This Declaration on the part of the Owner shall constitute a covenant running with the land and shall be recorded, at Owner's expense, in the public records of the County and shall remain in full force and effect and be binding upon the undersigned Owner, 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 Property and for the benefit of the County and the public welfare. Owner acknowledges that acceptance of this Declaration does not in any way obligate or provide a limitation on the County.

(4) **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) 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 the County.

(5) **Modification, Amendment, Release**. This Declaration 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 all of the Property, including joinders of all mortgagees, if any, provided that the same is also approved by the Board of County Commissioners or Community Zoning Appeals Board of Miami-Dade County, Florida, whichever by law has jurisdiction over such matters, after public hearing.

Should this Declaration be so modified, amended or released, the Director of the Miami-Dade County Department of Planning and Zoning, or the executive officer of the successor of such Department, or in the absence of such director or executive officer by his assistant in charge of the office in his absence, shall forthwith execute a written instrument effectuating and acknowledging such modification, amendment or release.

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

(7) **Authorization for the 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 Owner complies with this Declaration.

(8) **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.

(9) **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.

(10) **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

(11) **Recording**. This Declaration shall be filed of record in the public records of the County, at Owners expense following the final 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, 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, and upon written request, the Director of the Department of Planning and Zoning or the executive officer of the successor of said department, or in the absence of 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.

(12) **Acceptance of Declaration.** 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 and/or any appropriate Community Zoning Appeals Board retains its full power and authority to deny each such application in whole or in part and to decline to accept any conveyance or dedication.

(13) **Owner.** The term Owner shall include the Owner, and its heirs, successors and assigns.

Signed, witnessed, executed and acknowledged this 16th day of January, 2008.

(3) **Covenant Running with the Land**. This Declaration on the part of the Owner shall constitute a covenant running with the land and shall be recorded, at Owner's expense, in the public records of the County and shall remain in full force and effect and be binding upon the undersigned Owner, 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 Property and for the benefit of the County and the public welfare. Owner acknowledges that acceptance of this Declaration does not in any way obligate or provide a limitation on the County.

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LIBERTY STATION, INC.,
a Florida corporation

BY: _____
Claudia Fontecilla, Vice President

STATE OF FLORIDA }
ss:
COUNTY OF MIAMI-DADE }

The foregoing instrument was acknowledged before me this 16 day of January, 2008, by Claudia Fontecilla, who is personally known to me or produced a valid driver's license as identification

Notary Public
Sign Name: _____
Print Name: _____
MY COMMISSION EXPIRES: September 27, 2010

YVETTE CAPONI NOTARY PUBLIC STATE OF FLORIDA
My Comm. Expires September 27, 2010
No. DD 589598

MORTGAGEE JOINDER

The undersigned, US Century Bank, a Florida banking corporation, Mortgagee under that certain mortgage described below, covering the Property described in the foregoing Declaration of Restrictions, does hereby acknowledge that the terms of the below-described instrument shall be subordinate and inferior in all respects to the terms of the Declaration.

That certain Florida Real Estate Mortgage, Assignment of Leases and Rents and Security Agreement given by Liberty Station, Inc. in favor of US Century Bank, dated June 9, 2006 and recorded June 22, 2006 in Official Records Book 24658, Page 273 of the Public Records of Miami-Dade County, Florida.

IN WITNESS WHEREOF, the undersigned mortgagee has caused these presents to be executed as of this 14 day of January, 2008.

Witnesses:

Jessica Medina
Signature
Jessica Medina
Print Name

Signature
Eddie Diaz
Print Name

US CENTURY BANK, a Florida banking corporation

By: _____
Name: Jorge F. Hernandez
Title: Senior Vice President

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing Mortgagee Joinder by Mortgagee Corporation was acknowledged before me this 14th day of January, 2008, by JORGE F. Hernandez, as SVP of US Century Bank, a Florida banking corporation, on behalf of said corporation. He/She is personally known to me or has produced _____ as identification.

Name: Maria E. Escobedo
Notary Public, State of Florida
Commission No.: _____

MARIA ELENA ESCOBEDO
MY COMMISSION # DD 639692
EXPIRES: February 13, 2011
Bonded Thru Notary Public Underwriters

EXHIBIT "A"

LEGAL DESCRIPTION:

LOTS 9, 10, 11, 12, 13 AND 14, BLOCK 6 OF
"BELLEVUE BISCAYNE" ACCORDING TO THE PLAT
THEREOF AS RECORDED IN PLAT BOOK 17 AT PAGE 29
OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA