

# Application No. 1

## Commission District 2    Community Council 8

### APPLICATION SUMMARY

Applicant/Representative: Geovanis Medina/Gloria M. Velazquez, Esq.

Location: 100 feet east of NW 27 Avenue between NW 87 Terrace and theoretical NW 89 Street

Total Acreage: 1.57 Gross Acres, ± 1.37 Net Acres

Current Land Use Plan Map Designation: Business and Office and Low-Medium Density Residential (6-13 DU/Ac)

Requested Land Use Plan Map Designation: Business and Office

Amendment Type: Standard; was denied as a Small Scale

Existing Zoning/Site Condition: RU-1 (Single-Family dwellings on 7,500 sq ft net lots) and BU-3 (Liberal Business) / Parcel A: truck parking, Parcel B: vacant house, Parcel C: undeveloped

### RECOMMENDATIONS

Staff: **DENY** (August 25, 2007)

North Central Community Council: **NO QUORUM** (September 25, 2007)  
**NO RECOMMENDATION** (January 23, 2008)  
**TO BE DETERMINED** (March 26, 2008)

Planning Advisory Board (PAB) acting as Local Planning Agency: **DENY** (October 15, 2007)

Board of County Commissioners: **TRANSMIT AS A STANDARD AMENDMENT WITHOUT RECOMMENDATION** (November 27, 2007)

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

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

Final Action of Board of County Commissioners: **TO BE DETERMINED** (April 24, 2008)

**Initial Staff Recommendation:**

In the Initial Recommendations Report published on August 25, 2007, the staff recommended: **DENIAL** of the proposed amendment to redesignate the subject property from “Business and Office” and “Low-Medium Density Residential” (6 to 13 dwelling units per gross acre) to “Business and Office” on the adopted Land Use Plan (LUP) map of the Comprehensive Development Master Plan (CDMP) based on the staff analysis as summarized in the Principal Reasons for Recommendations below:

**Principal Reasons for Recommendations:**

1. The requested “Business and Office” designation would intrude into the “Low-Medium Density Residential” designated neighborhood east of the subject site that is situated 100 feet east of NW 27 Avenue between NW 87 Terrace and theoretical NW 89 Street. The application site is adjacent to the applicant’s business of selling used diesel trucks. The existing business faces NW 27 Avenue, and currently uses one of the parcels for overflow truck parking and storage. During a recent visit to the site, trucks and their accompanying trailers were observed parked within the swales on both sides of NW 88 Street. Expanding the “Business and Office” designation to include the subject properties would not be compatible with the abutting residential neighborhood, including single-family dwellings to the east and south of the application site. The North Central Miami- Dade Charrette Report, dated January 2003, states on page 25 regarding the NW 27<sup>th</sup> Avenue Used-Car Dealership District that “this use and district should be limited to the corridor and should not be allowed to permeate into the surrounding neighborhoods.”
2. The applicant has not demonstrated that redesignation of the subject site would provide adequate buffering and protection (e.g.: landscaping, screening, noise, fumes, etc.) for the adjacent residential property owners. The charrette has developed a set of design guidelines to assist the DP&Z and property owners in the development and redevelopment of businesses along the corridor.
3. The proposed request does not satisfy a deficiency in the Plan map to accommodate projected population or economic growth within the County. There are currently 95.7-acres of vacant commercial, or commercially zoned land, within the Analysis Area of which 37.4-acres are located within a 1.5-mile radius of the subject site. At the projected rate of absorption, the study area, Minor

Statistical Area (MSA) 4.2, will deplete its supply of commercially zoned or designated land beyond the year 2025.

4. The future north corridor of Metrorail is planned to extend along NW 27 Avenue between NW 79 Street and the Florida Turnpike. A new rapid transit station is proposed in the vicinity of NW 82 Street and NW 27 Avenue, which is a little more than 1/4 mile from the site. The application does not promote transit ridership and pedestrianism since the applicant is suggesting that the property will be used for a vehicular-oriented business, a truck dealership.
5. No existing sewer lines are located at or near the subject property. The Department of Environmental Resources Management (DERM) should be contacted to determine if a septic tank is allowed at the site and what, if any, restrictions of use might apply.

### **New Information**

Since the BCC transmittal public hearing on November 27, 2007 and the publication date of the Initial Recommendations Report (August 25, 2007), the Department of Planning and Zoning (DP&Z) has received updated information from the applicant and the Department of Community Affairs (DCA) concerning the application site. The applicant on November 2, 2007 proffered a Declaration of Restrictions (covenant) that would require the applicant to submit a landscape plan at the time of zoning to assure appropriate landscaping and buffering to protect the residential lots abutting the application site.

The DCA has submitted its "Objections, Recommendations and Comments" (ORC) report to the County on February 26, 2008, which included one objection to this application. Objection No. 4 concluded that Miami-Dade County is prohibited from adopting any Comprehensive Plan amendments, which potentially increase residential density, until the necessary school amendments to the CDMP and a revised Interlocal Agreement with the Miami-Dade County School Board has been adopted and transmitted to DCA. The application is subject to this objection because the "Business and Office" designation also allows residential development at a greater density than is allowed on adjacent property. The CDMP allows a one-density category increase over the designation of adjacent property on the same side of a major roadway. Thus, redesignation of the site would allow an increase in maximum density from 13 DU/Gross Acre to 25 DU/Gross Acre.

At the November 27, 2007 BCC transmittal public hearing, Commissioner Rolle requested that the staff reschedule a second hearing with the Community Council, and provide them an opportunity to consider making a recommendation on the application. The DP&Z scheduled a second meeting with the Community Council on January 23, 2008. Both the staff and the applicant's representative presented the application to the council; however, the Council chose not to finalize the recommendation and instead

requested staff to schedule a third meeting to consider the application. This meeting is scheduled for March 26, 2008.

### **Revised Recommendation**

Staff recommends **DENIAL** of the application to redesignate the subject property from “Business and Office” and “Low-Medium Density Residential” (6 to 13 dwelling units per gross acre) to “Business and Office” on the adopted LUP map of the CDMP based on the following:

1. The reasons stated in the initial recommendations for denial of the application are still valid. The proposal will result in an intrusion into the residential neighborhood. A need does not exist for more commercial land in the area since the supply will not be depleted in MSA 4.2 until after 2025. The site is in the vicinity of a future Metrorail station, however, the proposed use, a motor vehicular dealership, does not promote the use of transit. The site is not served by sewer lines.
2. The other reason given in the initial recommendations was that the applicant has not demonstrated that redesignation of the subject site would provide adequate buffering and protection (e.g.: landscaping, screening, noise, fumes, etc.) for the adjacent residential property owners. The applicant has proffered a covenant that would require the applicant to submit a landscape plan at the time of zoning to assure appropriate landscaping and buffering to protect the residential lots abutting the application site. However, the applicant has not demonstrated that the proposed landscaping plan would adequately protect those properties abutting and adjacent from excessive noise, light, glare, odor, vibration, dust or traffic.

## **Appendix 1**

Proffered Declaration of Restrictions received on November 2, 2007.

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This instrument was prepared by:  
Name: Gloria M. Velazquez, Esq.  
Gloria M. Velazquez, Esq. PA  
Address: 1711 West 38<sup>th</sup> Place, Unit 1207  
Hialeah, Florida 33012

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2007 OCT 33 P 4: 19  
PLANNING & ZONING  
METROPOLITAN PLANNING SEC1

April 2007 cycle - Application 1

(Space reserved for Clerk)

**DECLARATION OF RESTRICTIONS**

WHEREAS, the undersigned Owner holds the fee simple title to the land in Miami-Dade County, Florida, described in Exhibit "A", and hereinafter called the "Property," which is supported by the attorney's opinion attached as Exhibit "B";

WHEREAS, the Property is the subject of a Comprehensive Development Master Plan ("CDMP") Amendment Application No. 1 of the April 2007 Amendment Cycle (the "Application");

WHEREAS, the owner has sought a land use amendment to change the designation of Property;

NOW THEREFORE, in order to assure Miami-Dade County (the "County") that the representations made during the consideration of Application will be abided by the Owner, its successors and assigns, freely, voluntarily and without duress, make the following Declaration of Restrictions covering and running with the Property until such time the property is rezoned to commercial.

(1) A landscape site plan which is acceptable to the Director of Planning and Zoning will be submitted at the time of zoning that assures appropriate landscaping and buffering. The site plan will include landscaping and buffering to ensure that the residential lots abutting the Property provides for adequate buffering.

(Space reserved for Clerk)

**County Inspection.** As further part of this Declaration, it is hereby understood and agreed that any official inspector of Miami-Dade 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 requirements of the building and zoning regulations and the conditions herein agreed to are being complied with.

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

**Term.** This Declaration is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years from the date this Declaration is recorded after which time it shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by the, then, owner(s) of the Property has been recorded agreeing to change the covenant in whole, or in part, provided that the Declaration has first been modified or released by Miami-Dade County.

**Modification, Amendment, Release.** This Declaration of Restrictions may be modified, amended or released as to the land herein described, or any portion thereof, by a written instrument executed by the then owner(s) of the land covered by the proposed amendment, modification or release, provided that the same is also approved by the Board of County Commissioners. Any such modification, amendment or release shall be subject to the provisions governing amendments to Comprehensive Plans, as set forth in Chapter 163, Part II, Florida Statutes or successor legislation which may, from time to time, govern amendments to comprehensive plans (hereinafter "Chapter 163"). Such modification, amendment or release shall also be subject to the provisions governing amendments to comprehensive plans as set forth in Section 2-116.1 of the Code of Miami Dade County, or successor regulation governing amendments to the Miami Dade comprehensive plan. Notwithstanding anything in this paragraph, in the event that the Property is incorporated within a new municipality which amends, modifies, or declines to adopt the provisions of Section 2-116.1 of the Code of Miami-Dade County, then modifications, amendments or releases of this Declaration shall be subject to Chapter 163

and the provisions of such ordinances as may be adopted by such successor municipality for the adoption of amendments to its comprehensive plan; or, in the event that the successor municipality does not adopt such ordinances, subject to Chapter 163 and by the provisions for the adoption of zoning district boundary changes. Should this Declaration be so modified, amended or released, the Director of the Planning and Zoning Department 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 effectuating and acknowledging such modification, amendment or release.

**Authorization for Miami-Dade County (or successor municipal corporation) 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 (or any successor municipal corporation) is hereby authorized to withhold any further permits, and refuse to make any inspections or grant any approvals, until such time as this Declaration is complied with.

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

**Presumption of Compliance.** Where construction has occurred on the Property or any portion thereof, pursuant to a lawful permit issued by the County (or any successor municipal corporation), and inspections made and approval of occupancy given by the County (or any successor municipal corporation), 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.

**Covenant Running with the Land.** This Declaration shall constitute a covenant running with the land and shall be recorded, at the Owners' expense, in the public records of Miami-Dade County, Florida, and shall remain in full force and effect and be binding upon the undersigned Owners, and their heirs, successors and assigns, including the Applicant, unless and until the same is modified or released. These restrictions during their lifetime shall be for the benefit of, and limitation upon, the then owner(s) of the real property and for the public welfare.

**Severability.** Invalidation of any one of these covenants, by judgment of Court, shall not affect any of the other provisions that 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.

**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.

**Recording.** This Declaration shall be filed of record in the public records of Miami-Dade County, Florida at the cost of the Owners following the approval of the Application. This Declaration shall become effective immediately upon recordation. Notwithstanding the previous sentence, if any appeal is filed, and the disposition of such appeal results in the denial of the application, in its entirety, then this Declaration shall be null and void and of no further effect. Upon the disposition of an appeal that results in the denial of the Application, in its entirety, and upon written request, the Director of the Planning and Zoning Department or the executive officer of the successor of said department, or in the absence of such director or executive officer by his/her assistant in charge of the office in his/her absence, shall forthwith execute a written instrument, in recordable form, acknowledging that this Declaration is null and void and of no further effect.

**Acceptance of Declaration.** 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.

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

[Execution Pages Follow]

**LEGAL DESCRIPTION**  
**Exhibit "A"**

**Parcel A**

The West 100 Feet of Tract 5-A, of REVISED PLAT OF OXFORD GATE, a subdivision recorded in Plat Book 33, Page 65 of the Public Records of Miami-Dade County, Florida, less and except the part lying North of North line of SW 1/4 of SW 1/4 of SW 1/4 of Section 3, Township 53 South, Range 41 East, Miami-Dade County, Florida. The Parcel Identification Number is 30-3103-028-0270.

**Parcel B**

The East 100 Feet of West 200 Feet of Tract 5-A, of REVISED PLAT OF OXFORD GATE, a subdivision recorded in Plat Book 33, Page 65 of the Public Records of Miami-Dade County, Florida, less the part lying North of North line of SW 1/4 of SW 1/4 of SW 1/4 of Section 3, Township 53 South, Range 41 East, Miami-Dade County, Florida. The Parcel Identification Number is 30-3103-028-0240.

**Parcel C**

The West 150 Feet of Tract 4-A of OXFORD GATE according to the revised plat thereof, as recorded in Plat Book 33 at Page 65 of the Public Records of Miami-Dade County, Florida. The Parcel Identification Number is 30-3103-028-0090.

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