

RESOLUTION No. 2009-58-1003-Z-85

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, APPROVING AN AMENDMENT TO A PREVIOUSLY ACCEPTED DECLARATION OF RESTRICTIONS, WHICH WAS RECORDED IN OFFICIAL RECORDS BOOK 26049 PAGE 2780, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; PROVIDING FOR CONDITIONS; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on June 6, 2007, the City Council adopted Ordinance No. 2007-14-120 which rezoned the property referenced on Exhibit "A" hereto from RU-1 to BU-1, and

WHEREAS, at the time that that Ordinance was approved, Applicant proffered a Declaration of Restricted Covenants agreeing to limit the use to a Beauty Salon and to those uses permitted in the RU-5A Semi-Professional Office District, and

WHEREAS, the Applicant, Danny Felton, requested that the City Council delete the above condition to allow any and all uses in the BU-1 Business Neighborhood District to be conducted from the site, and

WHEREAS, City staff reviewed the application and recommended a denial of the Application on the basis that the BU-1 Business Neighborhood District uses will be intrusive and encroach into the Single-Family Neighborhood which violates the policies and objectives of the City's Comprehensive Development Master Plan, and that BU-1 uses would promote excessive overcrowding of people, create a nuisance, and would allow the establishment and activity that is inherently incompatible with the area and the basic intent of the Zoning Code, and

WHEREAS, City staff has prepared a Staff Report, a copy of which is attached hereto as Exhibit "B," and

WHEREAS, the City Council has authorized an amendment to the original Declaration of Restrictive Covenants to allow for certain additional uses in the BU-1A Zoning District, and

WHEREAS, a public hearing was held for this matter on March 4, 2009, and

WHEREAS, the Applicant was given the opportunity to present evidence to the City Council,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORIZATION: The City Council of the City of Miami Gardens hereby authorizes an amendment to that certain Declaration of Restrictions, which was recorded in Official Records Book 26049 Page 2780, of the Public Records of Miami-Dade County, Florida, to permit those uses allowed in the RU-5A District and the following uses that are permitted in the BU-1 Zoning District:

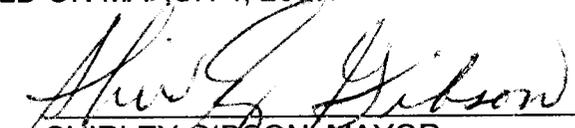
1. Antique shops.
2. Apparel stores selling new merchandise, provided such establishments offering used merchandise contain not more than two thousand (2,000) square feet of gross floor area. The incidental sales of jewelry, toys, and furniture shall be permitted in conjunction with the sales of used apparel, provided that the floor area devoted to the display of those incidental sales items does not exceed thirty (30) percent of the total gross floor area of the apparel store.
3. Art good stores, artist studios and photograph shops and galleries.
4. Beauty parlors.
5. Barber shops.
6. Confectionery, ice cream stores and dairy stores.
7. Florist shops.

- 8. Interior design shops, office and display only.
- 9. Optical stores.
- 10. Photograph galleries.
- 11. Tailor shops, provided such establishments contain not more than two thousand (2,000) square feet of floor area.
- 12. Tobacco shops.

All other uses in the BU-1 Zoning District are prohibited.

Section 3. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON MARCH 4, 2009.



 SHIRLEY GIBSON, MAYOR

ATTEST:



 RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ.
City Attorney

SPONSORED BY: DANNY CREW, CITY MANAGER

MOVED BY: Councilman Bratton
SECOND BY: Councilman Gilbert

VOTE: 5-0

Mayor Shirley Gibson	<u> X </u> (Yes)	___ (No)
Vice Mayor Barbara Watson	___ (Yes)	___ (No) (not present)
Councilman Melvin L. Bratton	<u> X </u> (Yes)	___ (No)
Councilman Aaron Campbell	___ (Yes)	___ (No) (out of town)
Councilman Oliver Gilbert, III	<u> X </u> (Yes)	___ (No)
Councilwoman Sharon Pritchett	<u> X </u> (Yes)	___ (No)
Councilman André Williams	<u> X </u> (Yes)	___ (No)



1515 N.W. 167TH STREET, BUILDING 5 SUITE 200
MIAMI GARDENS, FLORIDA 33169

**City of Miami Gardens
Agenda Cover Memo – Zoning
Danny Felton-PH-2008-000038**

Council Meeting Date:	Zoning Meeting 03/04/2009		Item Type: (Enter X in box)	Resolution	Ordinance		Declaration	
				X			n/a	
Fiscal Impact: (Enter X in box)	Yes	No	Ordinance Reading: (Enter X in box)	1 st Reading		2 nd Reading		
		X		Public Hearing: (Enter X in box)	Yes	No	Yes	No
Sponsor Name: City Manager	Department: Planning and Zoning		Advertising Requirement: (Enter X in box)	Yes		No		
				X				

Short Title:

RESOLUTION No. 2009-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, APPROVING THE APPLICATION SUBMITTED BY DANNY FELTON FOR PROPERTY GENERALLY LOCATED AT 580 NORTHWEST 183RD STREET, MORE PARTICULARLY DESCRIBED ON EXHIBIT "A" ATTACHED HERETO, FOR A DELETION OF A CONDITION OF A PREVIOUSLY ACCEPTED DECLARATION OF RESTRICTIONS, WHICH WAS RECORDED IN OFFICIAL RECORDS BOOK 26049 PAGE 2780, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, WHICH LIMITS THE USE OF THE PROPERTY TO A BEAUTY SALON AND TO THOSE USES IN THE RU-5A, SEMI-PROFESSIONAL OFFICE DISTRICT; PROVIDING FOR CONDITIONS; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

Staff Summary:

The Applicant, Mr. Danny Felton, is seeking the deletion of a condition of a Declaration of Restrictions, accepted on June 6, 2007 by the City Council in conjunction with Ordinance No. 2007-14-120. The Ordinance rezoned the site from RU-1 to BU-1 with the Applicant proffering a Declaration Restrictions limiting the use as follows:

**ITEM 10A) RESOLUTION
PUBLIC HEARING
Application submitted by Danny Felton**

1. **Limitation of Use.** *That the property will be limited to a beauty salon use and to those uses permitted in the RU-5A Semi-Professional Office District.*

The Applicant is requesting the deletion of the above condition; allowing all uses in the BU-1, Business Neighborhood District.

Recommendation

Recommend denial of the requested action based on the following considerations: 1) BU-1, Business Neighborhood uses will be intrusive and an encroachment to the surrounding single-family neighborhood, 2) the request is inconsistent with the Policies and Objectives of the CDMP, 3) BU-1 uses will generate excessive traffic and uses incompatible with the area, 4) the request is inconsistent with maintaining the basic intent and purpose of the Zoning Code.

Attachments

RESOLUTION
EXHIBIT "A" LEGAL DESCRIPTION
EXHIBIT "B" STAFF RECOMMENDATION

DANNY FELTON'S DRESS CODE
PH-2008-000038: DELETION OF A CONDITION OF A
PREVIOUSLY ACCEPTED AND RECORDED COVENANT
PAGE 4 OF 21

EXHIBIT "A"

LEGAL DESCRIPTION

DANNY FELTON'S DRESS CODE
PH-2008-0000038: DELETION OF A CONDITION OF A
PREVIOUSLY ACCEPTED AND RECORDED COVENANT
PAGE 5 OF 21

EXHIBIT "A"
LEGAL DESCRIPTION

NORTH RIDGE 1ST ADDN PB 55-50 LOT 1 BLK 8 LOT SIZE SITE VALUE F/A/U 30-
2112-003-0010 COC 26193-3084 12 2007 4

DANNY FELTON'S DRESS CODE
PH-2008-0000038: DELETION OF A CONDITION OF A
PREVIOUSLY ACCEPTED AND RECORDED COVENANT
PAGE 6 OF 21

EXHIBIT "B"
STAFF RECOMMENDATION

STAFF RECOMMENDATION
PH-2008-000038 Danny Felton

APPLICATION INFORMATION

Applicant: Danny Felton
Agent: James Saunders III, Esq.
Project Name: Dress Code
Site Location: 580 N.W. 183rd Street
Property Size: ± 0.17 Acre
Future Land Use: Neighborhood
Existing Zoning: BU-1, Neighborhood Business District
Requested Action(s):

Deletion of a condition of a previously accepted Declaration of Restrictions as recorded in Official Records Book 26049, Page 2780 of the Public Records of Miami-Dade County, Florida; which limits the use of the property to a beauty salon and to those uses permitted in the RU-5A Semi-Professional Office District.

RECOMMENDATION:

Recommend denial of the requested action based on the following considerations: 1) BU-1, Business Neighborhood uses will be intrusive and an encroachment to the surrounding single-family neighborhood, 2) the request is inconsistent with the Policies and Objectives of the CDMP, 3) BU-1 uses will generate excessive traffic and uses incompatible with the area, 4) the request is inconsistent with maintaining the basic intent and purpose of the Zoning Code.

REVIEW AND ANALYSIS

Neighborhood Land Use Characteristics

Property	Zoning District	Existing Use	Future Land Use Map
Site	BU-1, Business Neighborhood	Beauty Salon	Neighborhood
North	RU-1, Single-Family Residential	Single-Family Dwelling	Neighborhood
South	RU-1, Single-Family Residential	Single-Family Dwelling	Neighborhood
East	RU-1, Single-Family Residential	Single-Tenant Office	Neighborhood
West	BU-1, Neighborhood Business	Office Building	Commerce

The properties on three sides of the site are zoned RU-1 and are developed as single-family residences. An office building is located adjacent to the site with BU-1 zoning. Other commercial properties to the west along Miami Gardens Drive are located in various zones.

Project Summary/Background/Zoning History

The subject property covers approximately 9,000 square and was originally developed with a one-story, 1,200-square foot single-family residence with frontage on N.W. 183rd Street and N.W. 6th Avenue. As a result of an error, by the City in the issuance of a building permit to allow a beauty salon in the RU-1, Single Family Residential District, the City Council passed and adopted Ordinance No. 2007-14-120, on June 6, 2007 which approved an application sponsored by the City's Planning and Zoning Department and in concert with Mr. Danny Felton to rezone the property from RU-1, Single-Family Residential District to BU-1, Neighborhood District to allow the establishment of a beauty salon use. As a corollary to that approval, the City Council accepted a Declaration of Restrictions, which was voluntarily proffered by the Applicant and recorded in Official Records Book 26049, Page 2780 in the Public Records of Miami-Dade County, Florida which limits the use of the property to a beauty salon and those uses permitted in the RU-5A, Semi-Professional Office District.

The beauty salon has ceased operation for over a year and the Applicant is now requesting the deletion of the aforementioned condition to allow retail activities as permitted in the BU-1, Business Neighborhood District. The deletion of the condition would allow all uses in the BU-1, Business Neighborhood District.

Comprehensive Development Master Plan (CDMP)

The site is designated Neighborhood on the Future Land Use Map of the Future Land Use Element of the City of Miami Gardens Comprehensive Development Master Plan (CDMP). This land use designation applies to areas intended for low- and medium-density residential development with supporting commercial and office uses. Objective 1.2 of the Comprehensive Development Master Plan, states in pertinent terms:

"The Neighborhood land use designation applies to areas intended for low and medium density residential development with supporting commercial and office uses. The designation of Neighborhood is specifically intended to protect single-family homes from encroachment or intrusion from incompatible land uses."

The property is a corner lot located within a block that is predominantly residential in character. The approved beauty salon and RU-5A, Semi-Professional Office uses (see attachment) are less intensive and less intrusive as permitted BU-1, Business Neighborhood uses. BU-1 uses (see attachment), generate more noise, more pedestrian and vehicular traffic and are by, intensity alone, an encroachment or intrusion of incompatible land uses

CONCLUSION: The requested deletion of a condition of a previously accepted and recorded Declaration of Restrictive Covenants would allow the establishment of incompatible uses inconsistent with the CDMP's primary objectives and policies, which intended to protect single-family neighborhoods from the encroachment and intrusion of incompatible land uses.

Zoning Criteria and Additional Analysis

In accordance to Section 33-311(A)(7) "*Criteria for Modification or Elimination of Conditions imposed by Resolution*", which states:

"The City Council may hear applications to modify or eliminate any condition or part thereof which has been imposed by any final decision adopted by resolution, and to modify or eliminate any provisions of restrictive covenants, or parts thereof, accepted at public hearing, except as otherwise provided in Section 33-314(C)(3); provided, that the Council finds after public hearing that, when considering the necessity and reasonableness of the modification or elimination in relation to the present and future development of the area concerned, the modification or elimination would not (a) generate excessive noise or traffic, (b) tend to create a fire or other equally or greater dangerous hazard, (c) provoke excessive overcrowding of people, (d) would not tend to provoke a nuisance, or (f) be incompatible with the area concerned."

This request considers the necessity and reasonableness of deleting the condition that limits the use of the site to a beauty salon and all permitted uses in the RU-5A, Semi-Professional Office District. Allowing all uses in the BU-1, Business Neighborhood would not be compatible with the present and future use of the area. The zoning along this area of N.W. 183rd Street remains residential with some approvals for RU-5A Semi-Professional Offices; to allow BU-1 uses would generate excessive traffic and uses incompatible with the area. Business uses are compatible along major commercial corridors and not isolated in a neighborhood which still maintains a residential character. The permitted RU-5A uses allow low intensity office uses that create minimum traffic impacts without being incompatible to the residential homes in the area.

In addition, there are adequate and readily available BU zoned sites in the City that allow the more intense commercial uses without detrimental impacts on residential areas, and the current limitations on the site allows all RU-5A uses; the deletion of the condition of the Declaration of Restrictions is not considered necessary nor reasonable.

CONCLUSION: The deletion of the condition of the Declaration of Restrictions does not maintain the basic intent and purpose of the Zoning Code, and is not considered necessary nor reasonable.

Anticipated Facilities Impact

General: Concurrency determinations are not finalized during the zoning approval process.

Water and Sewer: The subject property is already connected to central water and lateral sewer services through the Miami-Dade County's Water and Sewer Department.

Traffic Circulation: Access to the existing beauty salon is provided from Miami Gardens Drive (N.W. 183rd Street) and from N.W. 6th Avenue. Trips generated from this relatively small beauty salon are practically negligible given that the segment of Miami Gardens Drive in proximity of the

site is a six-lane roadway that operates at a Level of Service (LOS) D or better, with approximately 3,900 trips available.

Public Notification/Comments

In accordance with the Zoning Code, notification of this rezoning request was mailed to property owners within five-hundred (500) feet of the subject site to provide them an opportunity to comment on or object the application if they so choose. No comments were received from any of the property owners within that radius. (See Mailed Notice Radius Map, attached).

Attachments:

- Public Hearing Checklist
- Letter of Intent
- Hearing Map-Zoning
- Hearing Map-Aerial
- Mailed Notice Affidavit
- Mailed Notice Radius Map
- Survey
- Declaration of Restrictions O.R.B. 26049 Page 2780
- BU-1, Business Neighborhood, Permitted Uses
- RU-5A, Semi-Professional Office District, Permitted Uses
- Transmittal Notice