



**DUNAY  
MISKEL  
BACKMAN** LLP

Gary Dunay

Bonnie Miskel

Scott Backman

Hope Calhoun

Dwayne Dickerson

Ele Zachariades

Matthew H. Scott

Christina Bilenki

Lauren G. Odom

Zach Davis-Walker

August 8, 2019

City of Fort Lauderdale  
City Clerk's Office  
Attn: David Soloman  
100 N. Andrews Avenue, 7<sup>th</sup> Floor  
Fort Lauderdale, FL 33301

**RE: Appeal of Planning & Zoning Board Denial of Rezoning Application Case # Z19002 on July 17, 2019.**

Dear Mr. Soloman,

This letter is being submitted pursuant to Section 47.26.B.1. of the City's ULDRs appealing the July 17, 2019 decision of the Planning and Zoning Board denying Case Number Z19002 which is a request for rezoning of the +/- 0.39 acre property located at 816 NW 6<sup>th</sup> Avenue, which is generally located on the east side of NW 6<sup>th</sup> Avenue, east of NW 6<sup>th</sup> Avenue, between NW 8<sup>th</sup> Street and NW 9<sup>th</sup> Street ("Property") in the City of Fort Lauderdale ("City"). The Property has a future land use designation of Northwest Regional Activity Center and is currently zoned General Industrial (I). Brody Family Investments, LLC ("Petitioner") submitted application number Z19002 to rezone the Property to the General Business (B-2) zoning district ("Rezoning"). The Rezoning would then allow Petitioner to utilize the property for a greater range of commercial uses that support the underlying Northwest Regional Activity Center Land Use. Petitioner submitted required application materials and justification statements demonstrating that the Rezoning complies with the review criteria listed in the City's Unified Land Development Regulations ("ULDRs"). City staff reviewed the application and found the Rezoning to be consistent with the City's ULDRs and complies with the rezoning review criteria and City's Comprehensive Plan.

On July 17, 2019, the City's Planning & Zoning Board held a public hearing and reviewed the Rezoning application. Although Petitioner provided competent substantial evidence that the Rezoning met the criteria for such applications under Section 47.24.4D of the City's ULDRs, the Rezoning was denied by the City's Planning & Zoning Board. Petitioner is now respectfully appealing the decision of the City's Planning & Zoning Board as there was a departure from the essential requirements of law in the proceedings by the board and as competent substantial evidence does not exist to support the decision.

Section 47-24.4.D of the City's ULDRs states that rezoning applications shall be reviewed in accordance with the following criteria: (1) the zoning district proposed is consistent with the City's Comprehensive Plan; (2) the changes anticipated by the proposed rezoning will not adversely impact the character of development in or near the area under construction; and (3) the character of the area proposed is suitable

for the uses permitted in the proposed zoning district and is compatible with surrounding districts and uses.

The Staff Report for the Rezoning specifically and expressly states that the Rezoning Application meets all the criteria for the Rezoning. At the July 17, 2019 Planning & Zoning Board hearing on the Rezoning Application, City staff also testified that the Rezoning application met all of the criteria for rezoning. Both Petitioner and City staff presented evidence and materials demonstrating that the Rezoning complies with the above noted criteria. No competent substantial evidence was presented to the Planning & Zoning Board to demonstrate the Rezoning did not comply with these criteria. Notwithstanding the foregoing, members of the Planning & Zoning Board made statements that they would not support the rezoning because it would be considered spot zoning, as the parcels immediately adjacent to the Property maintained the I-1, industrial zoning designation, despite parcels one block to the east and to the north with related business district zoning designations. The Assistant City Attorney present at the meeting also made statements that she believed the rezoning request amounted to spot zoning or raised spot zoning concerns. Comments were also made by board members that the City should pursue a rezoning of the entire area in order to bring the area into conformity with the underlying land use and change the desired zoning designation to the area, rather than approving Petitioner's individual pursuit of such a zoning change. As such, there was no basis for denial of the application according to the Code criteria. Instead, the basis for denial was generalized concerns about spot zoning and the Board's preference for the issue to be addressed with a more comprehensive, city-initiated rezoning of the area.

While there was no evidence to support the denial of the rezoning request, Petitioner provided the following evidence to demonstrate compliance with each of the rezoning criteria:

*(1) The zoning district proposed is consistent with the City's Comprehensive Plan.*

Petitioner submitted a justification statement for the Rezoning application that discussed the Northwest Regional Activity Center ("NWRAC") future land use designation that applies to the Property per the City's Comprehensive Plan. A copy of that justification statement is attached hereto as Exhibit "A". Petitioner noted that under the City's Comprehensive Plan, the NWRAC provides "the ultimate flexibility" for redevelopment activities and its goal is to provide commercial developments that are compatible with residential areas. As the Property is currently zoned for high intensity industrial uses that are incompatible with residential land uses, the current zoning designation conflicts with the City's Comprehensive Plan and the future land use designation. In contrast, the proposed B-2 zoning designation is a significant downzoning that certainly allows for a wider range of community business type uses that are more compatible with the surrounding residential areas.

The City's Comprehensive Plan further states that development and redevelopment within the NWRAC shall be consistent with the Northwest Progresso/Flagler Heights Community Redevelopment Plan ("Redevelopment Plan"). The Redevelopment Plan further identifies the intent of this area is to preserve and protect abutting neighborhood areas from incompatible commercial development, to enhance the quality of life in the residential neighborhoods and to provide employment and job opportunities as well as essential neighborhood services to the surrounding neighborhood areas. Again, the current industrial zoning designation on the Property is inconsistent with these goals and objectives. Rather, the proposed B-2 zoning designation is more suitable for the Property as it would allow for a diverse range of community business uses that will conform with the goal of providing neighborhood services and removing the incompatible uses that adversely effect the quality of life for the surrounding residential communities.

Finally, another goal of the Redevelopment Plan, which is taken directly from the City's Comprehensive Plan, is to evaluate industrial land uses in the NWRAC to determine where possible zoning changes are needed to assure compatibility with surrounding residential neighborhoods. As such, the City's Comprehensive Plan and the Redevelopment Plan both contemplate rezoning of the Property from the industrial land use designation to a commercial zoning designation that is more suitable for the area. As the Property is located approximately three hundred thirty (330) feet from a residentially-zoned area, it is the perfect example of an area where a zoning change is needed to ensure compatibility with the surrounding area.

The City also entered a staff report prepared by planning experts into the record which supported Petitioner's position that the Rezoning met the required criteria in the ULDRs. A copy of that staff report is attached hereto as Exhibit "B". In the staff report, staff noted that, per the City's Comprehensive Plan, the intent of the NWRAC is to contain a mixture of small to medium scale businesses, cultural and residential uses through the redevelopment and rehabilitation of existing buildings. Staff noted the Rezoning is also supported by Objective 1.7 which aims to support development and redevelopment activities within the Redevelopment Plan area. The staff report further notes that the Rezoning is consistent with Objective 1.10 which encourages redevelopment and expansion of employment opportunities within the NWRAC and Policy 1.7.5, which calls for the evaluation of industrial land uses in the NWRAC to determine where possible zoning changes are needed to assure compatibility with the surrounding neighborhood. The staff report also notes that the Rezoning of the Property supports community revitalization by introducing uses, including retail sales, commercial offices, and restaurants, that are consistent with the Redevelopment Plan and that the Rezoning support the redevelopment of an undervalued industrial area of the City that has the potential to serve as a major source of investment and employment for the surrounding community.

*(2) The changes anticipated by the proposed rezoning will not adversely impact the character of development in or near the area under construction.*

Petitioner presented evidence that the proposed Rezoning would not adversely impact the character of development in the area as the Rezoning is a downzoning to a less intense zoning district that is more compatible with the character of development within the area, including business districts one block to the north and east and residentially zoned districts only one and a half blocks to the east. Further, development to the east is intended for construction of more multi-family uses that are in need of the less intense and more community-oriented businesses that would be permitted under the B-2 zoning designation. Again, the existing industrial zoning adversely impacts the character of development in or near the area and is therefore not suitable for the Property.

City staff further presented evidence that the Rezoning will be consistent with the pattern of development emerging within the NWRAC, offering an opportunity to establish new community businesses that aid in the economic vitality of the City and nearby neighborhoods. City staff noted that the location of the Property aligns with the intent of the B-2 zone, which is to locate this district on sites concentrated on or around major trafficways per ULDR Section 47-6.2, as the Property is located on NW 6<sup>th</sup> Avenue, which connects to Sunrise Boulevard and Sistrunk Boulevard. Staff noted that as redevelopment continues, NW 6<sup>th</sup> Avenue will accommodate a mixture of commercial uses that will provide local commerce and employment opportunities, as contemplated by the City's Comprehensive Plan. City staff also concurred

that the uses permitted under the B-2 zoning designation are less intense than the existing industrial zoning district, promoting uses that are more consistent with and supporting of nearby residential areas. Staff also noted the compatibility in development standards between the proposed B-2 district and existing industrial district which will allow for building size compatibility and will help transition the area to a mixed-use corridor.

Once again, the City's Planning & Zoning Board did not hear or review any evidence to contest the evidence from Petitioner and/or staff that the Rezoning complies with this criterion. Rather, the Board heard baseless opposition from a neighbor and generalized concerns about spot zoning, which are legally insufficient to support denial.

*(3) The character of the area proposed is suitable for the uses permitted in the proposed zoning district and is compatible with surrounding districts and uses.*

Petitioner presented evidence that the B-2 zoning district is compatible with surrounding zoning districts and uses. More specifically, Petitioner demonstrated that the surrounding zoning districts include a business district one block east, followed by a multi-family residential zoning district approximately three hundred thirty (330) feet east of the Property. Petitioner presented evidence that the uses permitted in the B-2 zoning district are more restrictive, when considering intensity of the use, than the uses permitted under the current industrial zoning and that due to the location of the Property, on the edge of the industrial district and in such close proximity to residential uses, the existing zoning is less compatible with the surrounding districts than that of the proposed B-2 zoning designation.

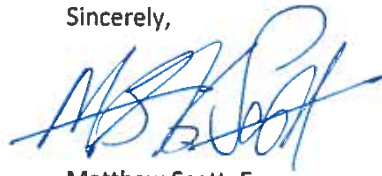
City staff provided additional evidence in support of this criterion. Staff demonstrated that based upon Table 1: Dimensional Requirements for the existing and proposed zoning designations, both districts are similar to one another when considering development standards and will allow for a seamless transition between the industrial uses immediately surrounding the Property and the proposed commercial uses. Staff noted that, if adopted, the B-2 zoning designation is not anticipated to have an adverse impact on the surrounding district and uses.

The City's Planning & Zoning Board did not hear or review any evidence to contest the evidence from Petitioner and/or staff that the character of the area is not suitable for the uses permitted in the proposed zoning district or that the character of the area is incompatible with surrounding districts and uses. During discussion, the City's Planning & Zoning Board noted they considered this to be spot zoning, despite evidence demonstrating compatibility and future redevelopment plans for the area. Petitioner presented evidence through applicable case law that held such zoning changes are not considered spot zoning when it is consistent with the purposes of the comprehensive plan. More specifically, Petitioner cited *Town of Juno Beach v. McLeod*, No. 4DO02-624 (4th DCA 2002), which held that zoning requests should be evaluated within the context of the municipality's comprehensive plan and that zoning changes should be scrutinized to ensure strict compliance with the comprehensive plan. Further, in a similar instance, the court in *S.W. Ranches Homeowners Association v. Broward County* 502 So2d 931, 935 (Fla. 4th DCA 1987) held that a similar zoning change did not constitute spot zoning where it was consistent with the purposes of the comprehensive plan. As such, Petitioner presented competent substantial evidence that the Rezoning met this criterion, but also that per applicable caselaw, the Rezoning did not constitute spot zoning. Again, the board noted that the City should initiate a rezoning for the area to amend the entire

region to a commercial business district, but did not present evidence that the proposed Rezoning did not comply with this criterion.

As previously noted, rezoning applications shall be reviewed in accordance with the three (3) criteria noted in Section 47.24.4.D of the ULDR. Where competent substantial evidence has been provided to demonstrate compliance with those three (3) criteria and in absence of competent substantial evidence that the request fails to meet those criteria, a rezoning application must be approved. During the public hearing before the Planning & Zoning Board for the Rezoning, Petitioner and City staff both presented evidence, supported by the application materials, that the Rezoning met the standards in Section 47.24.4.D. As such, Petitioner respectfully requests that this appeal be granted as competent substantial evidence does not exist to support the decision of the Planning & Zoning Board. Further, by making decisions based on factors not included within the criteria listed in Section 47.24.4.D, there was a departure from the essential requirements of law in the proceedings. Based on the foregoing, Petitioner respectfully requests that at the next available regularly scheduled meeting for the City Commission to accept this request for an appeal of the Planning & Zoning Board's denial of the Rezoning, and at this same meeting, conduct a de novo hearing and approve the Rezoning.

Sincerely,

A handwritten signature in blue ink, appearing to read 'MSB', is written over a horizontal line.

Matthew Scott, Esq.

*Dunay, Miskel & Backman, LLP*

**EXHIBIT A**

Owner: Brody Family Investments LLC  
Site Address: 816 NW 6<sup>th</sup> Avenue ("Property")  
Request: Rezoning from Industrial to B-2  
Author: Andrew Schein, Esq.

May 10, 2019

**Rezoning Narrative**

**City of Fort Lauderdale ULDR Section 47-24.4.D.**

1. The zoning district proposed is consistent with the city's comprehensive plan.

**RESPONSE:** The Property's future land use designation under the City's comprehensive plan is Northwest Regional Activity Center ("NWRAC"). Under the comprehensive plan, the NWRAC provides "the ultimate flexibility" for redevelopment activities and for preserving single-family residential neighborhoods within the area. One of the stated goals in the comprehensive plan for the NWRAC is to provide commercial developments that are compatible with residential areas.

The Property is currently zoned "industrial". While industrial uses are permitted in the NWRAC, the current zoning designation of the Property does not match the comprehensive plan's goal of providing uses that are compatible with residential areas. The B-2 zoning designation, which is a significant "downzoning" from the existing zoning, allows for more uses that are compatible with the surrounding residential areas and explicitly does not allow for "heavier" uses that are not consistent with the surrounding residential areas.

Additionally, the City's comprehensive plan states that development and redevelopment within the NWRAC shall be consistent with the Northwest Progresso/Flagler Heights Community Redevelopment Plan ("Redevelopment Plan"). The Property is located within the "Northwest District" of the Redevelopment Plan. The Redevelopment Plan states:

**"Overall, this Redevelopment Plan will generally, but not solely, assist in serving the needs of low and moderate-income neighborhoods by fostering development regulations designed to preserve and protect abutting neighborhood areas from incompatible commercial development. Additionally, it will help focus and direct basic physical improvement programs to the NPF CRA in order to enhance the quality of life in the residential neighborhoods, and improve the overall environment necessary to retain and attract sound business and commercial development that provide employment and job opportunities as well as essential neighborhood services to the surrounding neighborhood areas."** (emphasis added)

By rezoning the Property from industrial to B-2, the Property will be restricted from certain heavier land uses (manufacturing, warehousing, etc.) that are incompatible with the surrounding neighborhood areas. Instead of industrial uses, the B-2 zoning designation would promote the stated goals of the Redevelopment Plan by enhancing the quality of life in the surrounding residential neighborhoods and would allow for different uses that are more in conformity with the goal of providing essential neighborhood services (such as restaurants, bakeries, general retail, etc.) that are currently restricted by the zoning (but permitted under the land use).

Another goal in the Redevelopment Plan, which is taken directly from the comprehensive plan, is to “evaluate industrial land uses in the Northwest RAC to determine where possible zoning changes are needed to assure compatibility with surrounding residential neighborhoods.” The Property is located approximately 330 feet away from a residentially-zoned area, and the Applicant believes that the proposed downzoning of the Property to B-2 is the perfect example of an area that a zoning change is needed to assure compatibility with the surrounding residential neighborhoods.

The Applicant believes that this proposed rezoning is not only compatible with the comprehensive plan and the Redevelopment Plan, but is essential to further the stated goals and objectives of both plans.

2. The changes anticipated by the proposed rezoning will not adversely impact the character of development in or near the area under consideration.

**RESPONSE:** The proposed rezoning will not adversely impact the character of development in or near the area under consideration. The proposed rezoning is a downzoning to a less intense zoning district and will therefore be more compatible with the character of development near the area, specifically the residentially zoned areas to the east of the Property. The area, with more multifamily residential uses coming to fruition to the east of the Property, is in need of less intense and more neighborhood-friendly uses that are allowed in the B-2 zoning district but are not allowed in the industrial zoning district.

3. The character of the area proposed is suitable for the uses permitted in the proposed zoning district and is compatible with surrounding districts and uses.

**RESPONSE:** As stated above, the Property is approximately 330 feet from multifamily residential zoning to the east. The uses permitted in the B-2 zoning district are more restrictive, from an intensity standpoint, than the uses permitted under the current industrial zoning. Located on the edge of the industrial district near residential uses, the Property’s current zoning is less compatible with surrounding districts and uses than the proposed zoning.