

**BEFORE THE MIAMI-DADE COUNTY
ENVIRONMENTAL QUALITY CONTROL BOARD**

IN RE: : **Board Order No. 15-07**
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Miami Dade County Department :
of Regulatory and Economic Resources :

THIS MATTER came before the Board on February 12, 2015 as a request by Petitioner, the Director of the Miami-Dade County Department of Regulatory and Economic Resources (RER), for a class variance from the requirements of Sections 24-43(5) and 24-43.1(4) of the Code of Miami-Dade County, Florida. The request is to allow that certain covenants running with the land in favor of Miami-Dade County, which are required by the aforesaid Code sections, not be filed prior to the DERM approval of a redesignation of district boundary zones, as required therein, but prior to the approval of subsequent development orders. This request is a result of DERM disapproval of a zoning application (Z2014000116) to rezone the properties in this area. The area affected by the proposed zoning change is known as the Bird Road Design and Industrial Overlay District and the properties are located between (Bird Road) S.W. 40th Street and S.W. 48th Street and between S.W. 70th Ave and S.W. 74th Avenue, Miami-Dade County, Florida and are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.

Section 24-43(5) of the Code, states that no County or municipal officer, agent, employee, or Board shall approve, grant, or issue any zoning action for nonresidential land uses, unless the property owner has submitted a properly executed covenant running with the land in favor of Miami-Dade County, which provides that hazardous materials shall not be used, generated, handled, discharged, disposed of or stored on that portion of the property located within the average day pumpage wellfield protection area of the Alexander Orr Wellfield.

Section 24-43.1(4) of the Code states that no County or municipal officer, agent, employee, or Board shall approve, grant or issue any zoning action for nonresidential land uses served or to be served by any source of potable water supply and a septic tank, unless the property owner has submitted a properly executed covenant running with the land in favor of Miami-Dade County, which provides that the only

liquid waste which shall be generated, disposed of, discharged, or stored shall be domestic sewage discharged into a septic tank.

On September 1, 2009, the Board of County Commissioners adopted Ordinance No. 09-71 establishing the Bird Road Design and Industrial Zoning District (BRDI). Although this area has been primarily designated and zoned for industrial purposes, over time, the area has transitioned to a commercial and industrial mixed-use district now commonly known as the Bird Road Design District. With the establishment of the district, property owners could only avail themselves of the new district by filing individual applications to rezone their property. On September 3, 2014 the Board of County Commissioners adopted Ordinance No. 14-81 that amended the BRDI district standards to establish BRDI as an "overlay" district where affected properties would retain their underlying zoning district classification and additional regulatory criteria would be provided. For the majority of the properties within the subject area, the underlying zoning would continue to be industrial (primarily IU-1) and be eligible for additional commercial uses and reduced parking requirements provided by BRDI.

Through the rezoning process, DERM determined that the new zoning district includes nonresidential properties within the average wellfield protection area of the Alexander Orr Wellfield and nonresidential properties served by septic tanks. The Code requires that the covenants be filed prior to DERM approval of any zoning action if the nonresidential property is located within a wellfield protection area or if the nonresidential property is served by a septic tank.

Staff notes that the provisions of Sections 24-43 and 24-43.1 of the Code are applicable at all levels of development therefore the deferral of the filing of the covenants would cause no impacts. Furthermore, staff opines that trying to obtain the required covenants from the numerous property owners that are covered by the above described application would be a very cumbersome task that would severely impact the normal course of the zoning action.

The Board finds that based upon the evidence and testimony presented and the foregoing facts granting the requested class variances to allow that certain covenants running with the land in favor of Miami-Dade County, which are required by the Code, not be filed prior to the DERM approval of an application for a proposed zoning change, as required therein, but prior to the approval of subsequent development orders will not be detrimental to the public health, welfare and safety, will not create a nuisance, and will not materially increase the level of pollution in this County.

ACCORDINGLY, IT IS

ORDERED AND ADJUDGED that, based upon the evidence and testimony presented, the request for a class variance for the requirements of Sections 24-43(5) and 24-43.1(4) of the Code of Miami-Dade County, be and the same is hereby granted.

*The Petitioner is advised that this approval does not guarantee or ensure approvals from any other federal, state, county or municipal agency and that the class variance granted herein does not affect or modify any requirement of any other provision of law.

Done and Ordered this 7th day of April, 2015 in Miami-Dade County, Florida.

Claire Bradshaw Sidran

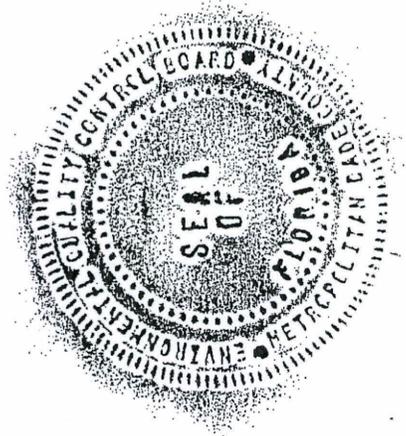
Claire Bradshaw-Sidran, Ph.D.
Chairperson

FILING AND ACKNOWLEDGEMENT

Filed on this 7th day of April, 2015 with the Secretary of the Board as Clerk of the Environmental Quality Control Board, receipt of which is hereby acknowledged and the seal of the Board affixed below.

[Signature]
Secretary and Clerk

SEAL



Approved as to form and legal sufficiency:

R. A. CUEVAS, JR.
Miami-Dade County Attorney
Attorney for the Board

[Signature]

By: David Sherman
Assistant County Attorney

Exhibit A

LEGAL DESCRIPTION

A portion of Section 23, Township 54 South, Range 40 East, Miami-Dade County, Florida; being more particularly described as follows:

BEGINNING AT A POINT being the intersection of SW 40th Street and SW 74th Avenue also being the northwest corner of the NW 1/4 of the NE 1/4 of the NW 1/4 of Section 23 Township 54 Range 40, thence south along the centerline of SW 74th Avenue to a point being +/- 32 feet east of the southeast corner of LOT 3 TRACT 1 of PRIMA INDUSTRIAL PARK (PB 133 PG 8), thence southeasterly along the centerline of NW 74th Avenue to a point on the centerline of the SEABOARD AIR LINE RAILROAD, thence southwesterly along the centerline of the SEABOARD AIR LINE RAILROAD to a point being along the west line of the SW 1/4 of the SE 1/4 of the NW 1/4 of Section 23 Township 54 Range 40, thence south to a point being along the north line of GATEWAY SUB SEC 1 (PB 129 PG 46), thence east to a point being the southeast corner of LOT 3 TRACT 1 of WESTON WAREHOUSES (PB 122 PG 72), thence north along the west line of the FLORIDA EAST COAST RAILWAY MIAMI BELT LINE to a point along the north line of Section 23 Township 54 Range 40 also being the centerline of SW 40th Street, thence west to the POINT OF BEGINNING.

Memorandum



Date: February 27, 2015

To: Jack Osterholt, Deputy Mayor/Director
Department of Regulatory and Economic Resources

From: Jose Gonzalez, P.E.
Department of Regulatory and Economic Resources

A handwritten signature in black ink, appearing to read "Jose Gonzalez". The signature is written in a cursive, flowing style.

Subject: BCC #Z2014000116-1st Revision
Department of Regulatory and Economic Resources
N of SW 48th St, E of SW 74th Ave, West of SW 70th Avenue & S of
SW 40th Street, Miami-Dade County
DBC from GU, RU-1, IU-1, IU-2, BRDI to Bird Road Design &
Industrial Overlay District (BRDI)
(GU) (156 Acres)
23-54-40

The subject application has been reviewed by the Department of Regulatory and Economic Resources – Division of Environmental Resources Management (DERM) for compliance with the requirements of Chapter 24 of the Miami-Dade County Code (the Code) and meets the minimum requirements of the Code. Accordingly, the application may be scheduled for public hearing.

Wellfield Protection

The properties within the proposed Bird Road Design & Industrial Overlay District (BRDI) located west of 71st Avenue are located within maximum and Average protection area of the Alexander Orr Wellfield. Therefore, development on the properties within the wellfield shall be in accordance with the regulations established in Section 24-43 of the Code.

The subject request is to establish a zoning classification that would allow non-residential land uses in this area. Section 24-43(5) of the Code provides that for properties located within the basic wellfield protection area of any public utility potable water supply well, no County or municipal officer, agent, employee, or Board shall approve grant or issue any zoning action for non-residential land uses, unless the property owner has submitted a properly executed covenant running with the land in favor of Miami-Dade County, which provides that hazardous materials shall not be used, generated, handled, discharged, disposed of or stored on that portion of the property located within the basic wellfield protection area of any public utility potable water supply well. Some of the existing non-residential properties in the proposed BRDI located in the average protection area of the wellfield do not have the aforementioned covenant. Each non-residential property located in the wellfield protection area would be required to file a covenant prior to the Department approval of this zoning request.

The Miami-Dade County Environmental Quality Control Board (EQCB) granted the property owner a variance from the requirements of Section 24-43(5) of the Code via Board Order 14-24, to allow the zoning action to proceed and to allow each property owner to file the required covenant prior to the approval of any subsequent development orders for any of the properties affected by the zoning action.

Wastewater Disposal

The proposed BRDI is located within the Miami-Dade Water and Sewer Department (MDWASD) sanitary sewer franchised service areas. Sanitary sewers are available on certain portions of this area in the form of gravity and force mains ranging in size from 8-inch to 16-inch.

The wastewater flows are directed via the sewage conveyance system to the MDWASD Wastewater Treatment Plants, which is an interconnected system, and at present it has sufficient capacity to treat current discharge. Inasmuch as there may be that at some point in time one or more sanitary sewer pump stations are on moratorium status, the capacity of the conveyance system would have to be determined on a case by case basis and would depend on the location of any specific property, at any given time, and would also depend on any proposed land use.

Several of the non-residential properties within the proposed BRDI do not have access to public sanitary sewers and are either served by a septic tank and drainfield system or would be served by a septic tank. Pursuant to the Code, non-residential properties can be approved for the interim use of a septic tank and drainfield, provided that the following items are satisfied:

1. The proposed development does not exceed the maximum sewage loading allowed by Section 24-43.1(4)(b) of the Code of 1,500 gallons per day per acre.
2. Pursuant to Section 24-43.1(4)(a) of the Code, the property owner submits a properly executed covenant running with the land in favor of Miami-Dade County which provides that the only liquid waste, less and except the exclusions contained therein, which shall be generated, disposed of, discharged or stored on the property shall be domestic sewage discharged into a septic tank. The covenant shall be submitted to and approved by the Department prior to public hearing. Each non-residential property served by a septic tank would be required to file a covenant prior to the Department approval of this zoning request.

The Miami-Dade County Environmental Quality Control Board (EQCB) granted the property owner a variance from the requirements of Section 24-43.1(4) of the Code via Board Order 14-24, to allow each property owner to file the required covenant prior to the approval of any subsequent development orders for any of the properties affected by the zoning action.

Stormwater Management

The applicant is advised that any redevelopment involving more than 2 acres of impervious area will require a DERM Surface Water Management General Permit for the construction and operation of the required surface water management system. This permit shall be obtained prior to any future development order approval. The applicant is advised to contact the Water Control Section of DERM (305-372-6681) for further information regarding permitting procedures and requirements.

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

Site grading and development plans shall comply with the requirements of Chapter 11C of the Code, as well as with all state and federal criteria, and shall not cause flooding of adjacent properties.

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 for this proposed development order.

The applicant is advised that if the proposed project is located within or near a possibly contaminated area a DERM Class VI Permit will be required for the construction of the surface water management system.

Tree Preservation

There are no tree resources issues on the subject property.

Enforcement History

There are 2 open enforcement records for violations of Chapter 24 of the Code for properties within the subject area:

1. Folio #30-4023-011-0023: DERM file UT-2257, involving open petroleum discharge violation - (discharge report form submitted on 11/02) discovered as part of a phase 2 assessment of site. Discharge was of gasoline and diesel, may be related to previous underground storage tank removal.
2. Folio #30-4023-012-0221: DERM file UT-2440, Tropical Paint & Body Shopm which is currently in the State of FL Petroleum Restoration Program.

Please contact the Enforcement Section if you require additional information.

Concurrency Review Summary

A concurrency review has been conducted 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 written approval as required by Chapter 24 of the Code.

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

cc: Nathan Kogon, Department of Regulatory and Economic Resources