

Date: September 4, 2014

To: The Honorable Mayor and City Council

From: Tanya Wilson-Sejour, Planning Manager, Community Planning & Development

Re: Small Scale Land Use Plan Amendment - 1401 NE 123 Street, North Miami



AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, ADOPTING A SMALL SCALE LAND USE PLAN AMENDMENT TO THE CITY OF NORTH MIAMI COMPREHENSIVE PLAN FUTURE LAND USE MAP, FOR THE LOTS LOCATED AT 1401 NORTHEAST 123RD STREET, OTHERWISE DESCRIBED AS A PORTION OF LOTS 9, 10 AND 11 OF BETHEA SUBDIVISION, FROM HIGH DENSITY RESIDENTIAL TO INDUSTRIAL LAND USE DESIGNATION, IN ORDER TO ALLOW FOR THE FUTURE EXPANSION OF AN EXISTING BUSINESS, CONSISTENT WITH THE INTENT OF THE CITY OF NORTH MIAMI COMPREHENSIVE PLAN; AND FURTHER AUTHORIZING THE CITY MANAGER TO DO ALL THINGS NECESSARY TO EFFECTUATE THE SUBJECT SMALL SCALE LAND USE PLAN AMENDMENT, AS REQUIRED BY FLORIDA LAW; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND FOR AN EFFECTIVE DATE.

RECOMMENDATION

That the Mayor and Council approve the proposed ordinance to amend the Comprehensive Plan, Future Land Use Map (FLUM) for the subject site, from High Density Residential to Industrial Land Use consistent with the requirements of Article 3, Section 3-1105 of the City's Land Development Regulations.

PLANNING COMMISSION RECOMMENDATION

At its meeting on November 5, 2013 the Planning Commission (attended by Commissioners, Castor, Ernst, Siefried, Prevatel and James) reviewed and discussed the resolution to amend the City's future land use map for the subject site. The applicant's agent Mr Frank Wolland gave a presentation and explained that the business is a nonconforming use and as such is constrained from expanding its operations. The owner wishes to amend the land use in order to comply with the City's Comprehensive Plan requirements. The Commission generally agreed that the proposed request would remove the current hindrance to economic growth and allow for the future expansion and improvements to a longstanding local business. As part of the discussion the Board further recommended that applicant improve the façade of the current building and include lush landscaping to enhance its appearance along the NE 123 Street business corridor. As such, the Commission rendered a vote of 5-0 recommending approval of the proposed ordinance along with the additional conditions outlined in this report. On December 10, 2013 the item was subsequently reviewed and discussed by the Mayor and Council and obtained a

Legend	
	Central City District Node Boundary
	Neighborhood Redevelopment Overlay Boundary
	Biscayne Park Height Transition Zone
	Central Business Commercial
	Commercial / Office
	Community Facility
	Community Facility-University
	Conservation
	High Density Residential
	Industrial
	Low Density Residential
	Low-Medium Density Residential
	Medium Density Residential
	Mixed Use Low
	Mixed Use Medium
	Open Space / Recreation
	Residential Office
	Utility
	Water
	Wetlands

ANALYSIS

Per Article 3, Section 3-1105 of the City’s Land Development Regulations all requests for amendments to the City’s Comprehensive Plan (Future Land Use Map) must satisfy the following minimum criteria:

1. **Whether the application specifically advances any goal, objective or policy of the Comprehensive Plan:**

As proposed the land use amendment is consistent with the goals, objectives and policies of the Comprehensive Plan, specifically Policy 9.4.6 which requires that the City “Create land use designations and zoning regulations that encourage the retention, attraction and expansion of business and industry”. Additionally policy 9.4.2 requires that the City “Introduce employment generating uses along major transportation corridors. Ensuring that employment generating land uses is compatible with neighborhood character through revisions in development regulations and permit review requirements.” The proposed use is anticipated to create new employment, and enhance the overall quality of life within the City. If approved the proposed amendment is anticipated to ensure the continued success of a long standing local business, increase the City’s tax base and help to improve the City’s overall welfare.

- b. **Its effect on the level of service of public infrastructure;**

The subject site is located on NE 123 Street, which is classified as a State owned (FDOT) minor arterial road. The City’s Transportation Master Plan indicates that the roadway segment that provides primary access to the property (NE 123 Street) is operating at a level of service (LOS) E. It should be noted that Policy 2A 1.1 of the City’s Comprehensive Plan requires that all roadways in the City shall operate at or above a LOS standard E. Additionally, the city of North Miami is designated as a Transportation Concurrency Exemption Area and Objective 2A.2 and Policy 2A.2.7 of the City Comprehensive Plan requires that the City actively pursue multimodal strategies to encourage a more pedestrian oriented environment that promotes walking, bicycling and public transit usage.

As part of the next approval phase the applicant will be required to submit a site plan and traffic analysis to the Development Review Committee in order to identify the future traffic impacts of the proposed development and determine if any mitigation is necessary. If it is determined that the future redevelopment of the site may potentially cause adverse impacts on any of the City's current or future infrastructure, the property owner would be required to mitigate these impacts that exceed the established level of service for a given public facility.

c. its effect on environmental resources;

The proposed land use plan amendment is not anticipated to have adverse impacts on the City's environmental resources. Per Section 5-805 of the City's LDR all new construction is required to incorporate LEED standards or the City's alternative green standards as part of its new development in order to support the City's environmental initiatives. If approved the applicant is required to construct an environmentally sustainable building with energy saving fixtures to minimize the water and electric consumption of the future development.

d. its effect on hurricane evacuation;

Policy 5A.3.1 of the Comprehensive Plan requires that the City "review of development proposals within the coastal planning area shall consider vehicular accessibility and internal circulation patterns to minimize the time required to evacuate the coastal planning area. Staff has determined that the subject site is not located in the Coastal Planning area.

e. Its effect on the availability of housing that is affordable to people who work in the City of North Miami; and

The proposed application will not affect the City's affordable housing efforts.

f. Any other effect that City staff determines is relevant to the City Council's decision on the application;

The applicant is encouraged to provide façade improvement, lush landscaping and screening along the frontage of the subject property in order to enhance the appearance of the corridor along NE 123 Street.

CONCLUSION

Based on our analysis, staff is of the opinion that the proposed land use amendment is consistent with the requirements of Chapter 163, Florida Statutes and is in keeping with the goals objectives and policies of the City's adopted Comprehensive Plan. Therefore staff **requests that the City Council approves the attached ordinance amending the Comprehensive Plan (Future Land Use Map) of the subject property from High Density Residential to Industrial land use subject to the following conditions:**

1. The applicant is required to obtain site plan review and approval for the proposed new development prior to obtaining final building permits. As such the applicant shall contact the City's Zoning Administrator in order to submit plans for Development Review Committee (DRC) approval.
2. As part of the future business expansion the applicant is required to make building façade and landscaping improvements to the front of the subject property in order to enhance the appearance of the business corridor along NE 123 Street.
3. Per Section 5-805 of the City's LDR all new construction is required to incorporate LEED standards or the City's alternative green standards in order to support the City's environmental initiatives. As such any future building construction contemplated onsite must be environmentally sustainable with energy saving fixtures to minimize the water and electric consumption of the future development.
4. The applicant voluntarily agrees to limit the sites use solely for the following uses: auto service station, automotive/mechanical, vehicle rentals, vehicle service minor, retail sales and service. Said limitation shall be included in a restrictive covenant and shall constitute a covenant running with the land and be recorded, at Owner's expense, in the public records of Miami-Dade County, Florida.
5. The applicant shall submit a draft declaration of restrictive covenant to the office of the City Attorney at least 30 days from final Council approval date for review prior to final recordation. The applicant will also furnish a copy of the recorded document to the Community Planning & Development Department once the instrument has been recorded with the County.

- Attachments:
1. Proposed Ordinance
 2. Location Map & Site Survey
 3. Land Use Map
 4. Letter of intent
 5. Restrictive Covenant

ORDINANCE NO. _____

AN ORDINANCE OF THE VICE MAYOR AS ACTING MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, ADOPTING A SMALL SCALE LAND USE PLAN AMENDMENT TO THE CITY OF NORTH MIAMI COMPREHENSIVE PLAN FUTURE LAND USE MAP, FOR THE LOTS LOCATED AT 1401 NORTHEAST 123RD STREET, OTHERWISE DESCRIBED AS A PORTION OF LOTS 9, 10 AND 11 OF BETHEA SUBDIVISION, FROM HIGH DENSITY RESIDENTIAL TO INDUSTRIAL LAND USE DESIGNATION, IN ORDER TO ALLOW FOR THE FUTURE EXPANSION OF AN EXISTING BUSINESS, CONSISTENT WITH THE INTENT OF THE CITY OF NORTH MIAMI COMPREHENSIVE PLAN; AND FURTHER AUTHORIZING THE CITY MANAGER TO DO ALL THINGS NECESSARY TO EFFECTUATE THE SUBJECT SMALL SCALE LAND USE PLAN AMENDMENT, AS REQUIRED BY FLORIDA LAW; PROVIDING FOR CONFLICTS, SEVERABILITY AND FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature passed and adopted Chapter 163, Local Government Comprehensive Planning and Development Regulation Act, which requires the City of North Miami (“City”) to adopt and enforce a comprehensive plan and corresponding future land use map; and

WHEREAS, Section 163.3187(1), Florida Statutes, allows local governments to periodically make small scale land use amendments to their comprehensive plan future land use map, if the proposed amendment: (a) does not exceed 10 acres, (b) the cumulative annual effect of the acreage for all adopted small scale amendments does not exceed 120 acres, (c) the proposed amendment does not involve a text change to the goals, policies, and objectives of the comprehensive plan, and (d) the property that is the subject of the proposed amendment is not located within an area of critical state concern; and

WHEREAS, the subject property located at 1401 Northeast 123rd Street, is identified as a portion of Lots 9, 10 and 11 with Miami-Dade County Folio 06-2229-047-0020, consisting of 22,100 square feet or .51 acres in size (“Subject Property”), and is currently designated on the City Comprehensive Plan (“Comprehensive Plan”) Future Land Use Map as High Density Residential land use; and

WHEREAS, the Subject Property is comprised of three adjacent and abutting lots which have been occupied by a legal nonconforming automotive repair business for many years; and

WHEREAS, Section 6-202 of the City Code of Ordinances, Land Development Regulations (“LDRs”) prohibits the expansion, enlargement or extension of nonconforming uses; and

WHEREAS, Shani Management, Inc., the owner of the Subject Property, filed an application for a Small Scale Land Use Plan amendment to change the use of the Subject Property from High Density Residential land use to Industrial land use, in order to expand the existing business and provide additional services to the public; and

WHEREAS, Policy 9.4.6 of the Comprehensive Plan, requires the City to “create land use designations and zoning regulations that encourage the retention, attraction and expansion of business and industry”; and

WHEREAS, Policy 9.4.2 of the Comprehensive Plan, further requires that the City introduce employment generating uses along major transportation corridors, ensuring that employment generating land uses are compatible with the character of the neighborhood, through revisions in development regulations and permit review requirements; and

WHEREAS, the proposed Small Scale Land Use Plan amendment is consistent with the Comprehensive Plan which encourages mixed use along major corridors and promotes redevelopment that enhances the public health, safety and welfare; and

WHEREAS, the Planning Commission, after a duly noticed public hearing held on November 5, 2013, found the application to be consistent with the goals, policy and objectives of the Comprehensive Plan and recommended approval of the Small Scale Land Use Plan amendment to the Vice Mayor as acting Mayor and City Council; and

WHEREAS, Policy 1.1.3 of the City Comprehensive Plan requires changes to the Future Land Use Map, as the one requested here, cannot be approved without the concurrence of a supermajority vote of the Mayor and City Council; and

WHEREAS, the Vice Mayor as acting Mayor and City Council, find that the adoption of the proposed Small Scale Land Use amendment to the Future Land Use Map is consistent with the Comprehensive Plan and in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE VICE MAYOR AS ACTING MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, THAT:

Section 1. Subject Property. The property legally described in the attached “Exhibit 1”, according to the Public Records of Miami-Dade County, Florida, is hereby re-designated from High Density Residential land use designation to Industrial land use designation.

Section 2. Authority of City Manager. The City Manager is hereby authorized to do all things necessary to effectuate the subject land use amendment as required by Florida law.

Section 3. Conflicts. All ordinances or parts of ordinances in conflict or inconsistent with this Ordinance are repealed.

Section 4. Severability. The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Effective Date. This Ordinance shall not become effective until thirty one (31) days after the state land planning agency notifies the City that the plan amendment packet transmitted is complete if not otherwise challenged.

PASSED AND ADOPTED by a _____ vote of the Vice Mayor as Acting Mayor and City Council of the City of North Miami, Florida, on first reading this _____ day of September, 2014.

PASSED AND ADOPTED by a _____ vote of the Vice Mayor as Acting Mayor and City Council of the City of North Miami, Florida, on second reading this _____ day of September, 2014.

PHILIPPE BIEN-AIME
VICE MAYOR AS ACTING MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: COUNCILPERSON SCOTT GALVIN

Moved by: _____

Seconded by: _____

Vote:

Vice Mayor as Acting Mayor Philippe Bien-Aime
Councilperson Carol Keys, Esq.
Councilperson Marie Erlande Steril
Councilperson Scott Galvin

_____ (Yes) _____ (No)
_____ (Yes) _____ (No)
_____ (Yes) _____ (No)
_____ (Yes) _____ (No)

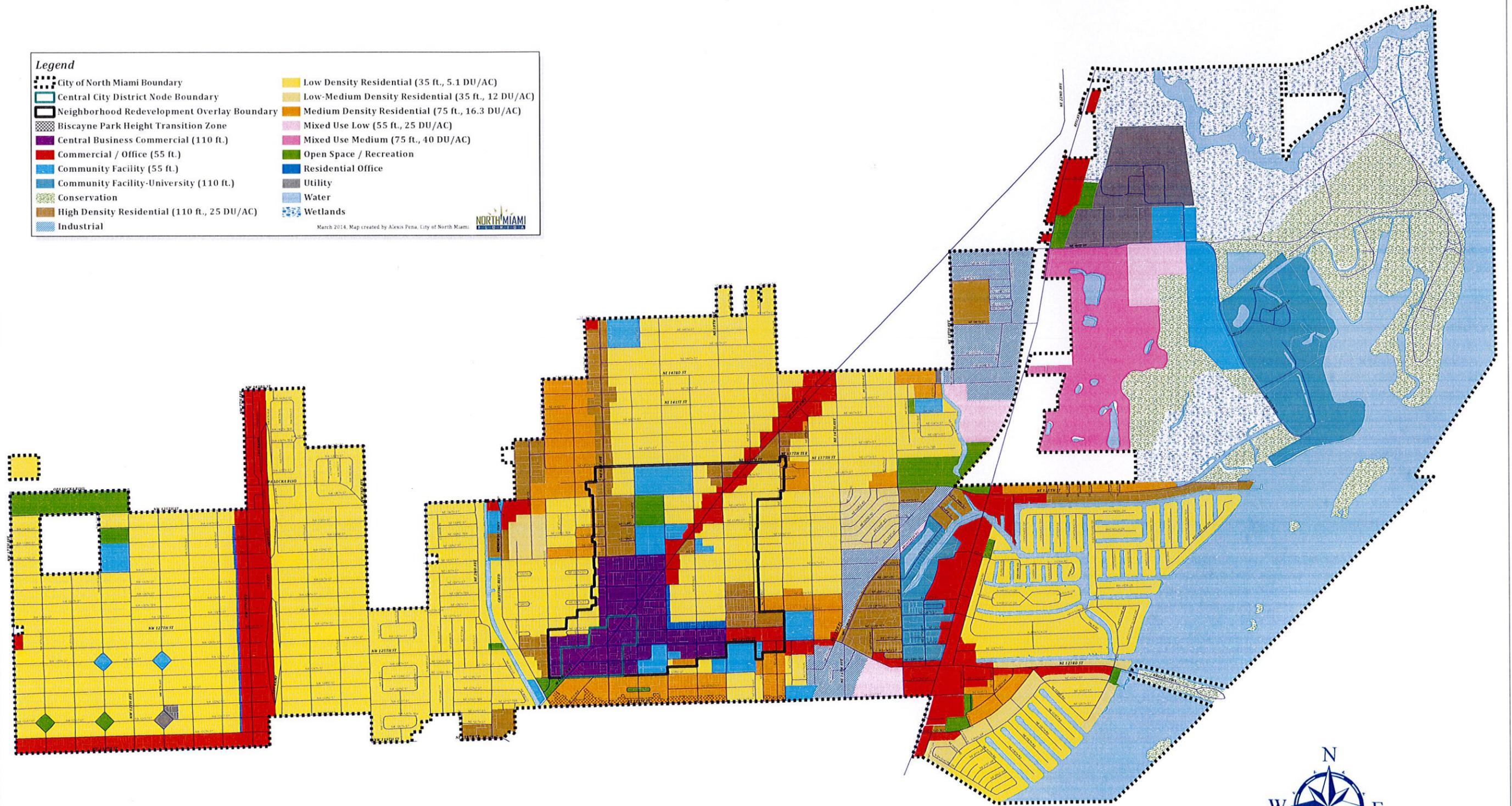
Additions shown by underlining. Deletions shown by ~~overstriking~~.

City of North Miami - Future Land Use Map

Legend

City of North Miami Boundary	Low Density Residential (35 ft., 5.1 DU/AC)
Central City District Node Boundary	Low-Medium Density Residential (35 ft., 12 DU/AC)
Neighborhood Redevelopment Overlay Boundary	Medium Density Residential (75 ft., 16.3 DU/AC)
Biscayne Park Height Transition Zone	Mixed Use Low (55 ft., 25 DU/AC)
Central Business Commercial (110 ft.)	Mixed Use Medium (75 ft., 40 DU/AC)
Commercial / Office (55 ft.)	Open Space / Recreation
Community Facility (55 ft.)	Residential Office
Community Facility-University (110 ft.)	Utility
Conservation	Water
High Density Residential (110 ft., 25 DU/AC)	Wetlands
Industrial	

March 2014. Map created by Alexis Pena, City of North Miami.

**FRANK WOLLAND
ATTORNEY AT LAW
12865 West Dixie Highway
North Miami, FL 33161**

FRANK WOLLAND, ESQ.
Email: fwolland@wolland.com

**TEL: 305-899-8588
FAX: 305-892-8434**

September 9, 2013

Community Planning and Development
12400 N.E. 8th Avenue
North Miami, Florida 33161
(305) 895.9825

Re: Letter of Intent Regarding the Land Use Designation and Re-Zoning of 1401 NE 123rd Street

Dear City Planning Commissioners and City Councilpersons,

Our Client, Shani Management (a.k.a. Brake and Auto Specialists), is an auto repair facility located at 1401 NE 123rd Street, near Arch Creek Road, in North Miami, Florida. Currently the property where the facility is located is zoned as an R-6 designation. Mr. Ziv Rapaport, the president of Shani Management and the owner of Brake and Auto Specialists, would like to expand the business to include car washing and car rentals. This expansion however, would not be permitted under the current zoning restrictions. We believe that it may be advisable for the property to be re-designated as M-1 industrial use, which would allow the use of not only auto repair, but also car washing and car rentals. In addition, to further our Client's intent to expand his business and to promote a better economy in the City of North Miami, we respectfully ask that the City Planning Commission and City Council Members approve an amendment to the Land Use Plan, changing the current land use designation from Residential High to Industrial. Thank you.

Most Cordially,

Frank Wolland
Attorney at Law
12865 West Dixie Highway
North Miami, FL 33161
Office (305) 899-8588
Fax (305) 892-8434
fwolland@wolland.com

RECEIVED

OCT 15 2013

COMMUNITY PLANNING
& DEVELOPMENT

DECLARATION OF RESTRICTIONS

WHEREAS, the undersigned Shani Management, Inc., a Florida Corporation, Owner, holds the fee simple title to the land in North Miami, Florida, described in Exhibit "A", attached hereto, and hereinafter called the "Property," which is supported by the attorney's opinion, described in Exhibit B, attached hereto, and

WHEREAS, the Owners pending Land Use Amendment application and request for rezoning seeks to change the Property's land use designation from Residential High to Industrial.

WHEREAS, the rezoning application seeks to rezone the Property from R-6 to M-1.

IN ORDER TO ASSURE the City that the representations made by the Owner during consideration of the applications will be abided by, the Owner freely, voluntarily and without duress makes the following Declaration of Restrictions covering and running with the Property

1. **Property.** The Property shall consist of an Industrial land use designation and be zoned M-1, Industrial district.
2. **Permitted Uses.** Only the following uses, as defined in Chapter 29, Article 7, Section 7-101, shall be permitted on the property:
 - (1) Vehicle Service, Minor;
 - (2) Auto Service Station;
 - (3) Vehicle Rental; and
 - (4) Retail, Sales, and Services.
3. **Accessory Uses.** The following accessory uses shall be permitted in connection with any vehicle service use on the property:
 - (1) Washing, waxing and detailing.
4. **Prohibited Uses.** The property shall not be used for any of the other permitted uses listed under Chapter 29, Article 4, Division 3, Section 4-302. In order to further reassure the City, the following uses shall be strictly prohibited:
 - (1) Adult Businesses;
 - (2) Bar, Lounge or Tavern;
 - (3) Gun Shops;
 - (4) Liquor Package Stores;
 - (5) Nightclubs; and
 - (6) Tow Truck Yard.

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 its heirs, successors and assigns until such time as the same is modified or released. These restrictions shall be for the benefit of, and limitation upon, all present and future owners of the real property and for the benefit of the City of North Miami and the public welfare. Owner, and its heirs, successors and assigns, acknowledge that acceptance of this Declaration does not in any way obligate or provide a limitation on the City of North Miami

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 City of North Miami.

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 all the property, provided that the same is also approved by the City Council of the City of North Miami

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.

Authorization for the City of North Miami 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 City is hereby authorized to withhold any further permits, and refuse to make any inspection or grant 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 City, and inspection made and approval of occupancy given by the City, then such construction, inspection

and approval shall create a rebuttable presumption that the building or structures thus constructed comply with the intent and spirit of this Declaration.

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 City shall be entitled to revoke any approval predicated upon the invalidated portion.

Recording. This Declaration shall be filed of record in the public records of Miami-Dade County, Florida at the cost of Owner following approval of the Applications. 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 the 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.

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

Condemnation. In the event that the City of North Miami seeks to acquire the Property in the future, this covenant and the change of zoning shall not prejudice the City or the Owner.

Signed, witnessed, executed and acknowledged on this _____ day of December 2013.

IN WITNESS WHEREOF, Shani Management, Inc., has caused these presents to be signed in its name by its proper officials.

By: _____
Ziv Rapaport, President,
Shani Management, Inc.
1401 NE 123rd Street
North Miami, FL 33161

Witnesses:

Signature

Print Name

Signature

Print Name

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by Ziv Rapapport, the President of Shani Management, Inc. He is personally known to me or has produced _____, as identification.

Witness my signature and official seal this _____ day of September 2014, in the County and State aforesaid.

Signature
Notary Public-State of Florida

Print Name

My Commission Expires: _____