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4. **CITY OF POMPANO BEACH / NE 28TH COURT**
Planning and Zoning #17-05000003

Consideration of the NONRESIDENTIAL FLEX REQUEST submitted by **STEVEN WHERRY** on behalf of **POMPANO FORD LINCOLN, INC** to request Commercial Land Use to be located on property that has a Residential Low (L) Land Use designation. The site is either owned or under purchase contract by Pompano Ford Lincoln, Inc. (aka Holman Ford). The purpose of the Commercial Flex allocation request is to allow the development of a surface parking lot and eventually a parking garage to support business operations at the Ford dealership. The property is a 0.7 acre site which contains six single-family homes located on the south side of NE 28th Court. The subject site is legally described as follows:

LOTS 1, 2, 3, 4, 5, 6 OF BLOCK 1 ACCORDING TO THE PLAT OF CRESTHAVEN NO. 3 AS RECORDED IN PLAT BOOK 37, PAGE 11 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

AKA: 1628 NE 28th Court, 1642 NE 28th Court, 1656 NE 28th Court, 1670 NE 28th Court, 1684 NE 28th Court, 1698 NE 28th Court
ZONED: RS-4 (Single Family Home 4)
STAFF CONTACT: Jean Dolan (954)786-4045

Ms. Dolan, Principal Planner, presented herself to the Board. She explained that the request is to allow a commercial use on a property that has a Residential Low-Density land use designation. The site is either owned or under purchase contract by Pompano Ford Lincoln and the purpose of the request is to allow a surface parking lot and eventually a parking garage to support business operations at the Ford dealership. The applicant design team has submitted a conceptual site plan for both the surface lot and the parking structure.

Given the information provided to the Board as the findings of fact, staff provides the following alternative motions, which may be revised or modified at the Board's discretion.

Alternative Motion I

Approval of the Commercial Flex allocation with the following conditions of implementation:

1. The design team shall obtain the B-3 rezoning and subsequently, site plan and building design approvals.
2. The site plan ultimately approved for this site shall be generally consistent in regard to setbacks and buffering with the Conceptual Plan (Attachment 1) for both the Phase 1 surface parking lot and the ultimate parking structure. It must be noted that the parking space layout shown on the Conceptual Site Plans may need to be revised as required to meet the City's code requirements and such revisions will not affect the flex approval.
3. The parking structure façade design facing north and west (at a minimum) will create the impression that the structure is a multifamily residential building. The parking structure design will be required meet the City's adopted design standards for parking structures.
4. The Commercial Flex Allocation shall be limited to the B-3 uses noted in the Declaration of Restrictive Covenants recorded as a condition of approval of the B-3 rezoning.

Alternative Motion II

Table this application for additional information as requested by the Board.

Alternative Motion III

Denial of the Commercial Flex Allocation. The Board finds that the allocation of the Commercial Flex is not consistent with the goals, objectives and policies of the Comprehensive Plan, specifically:

POLICY 01.02.02 Consider the preservation of established single-family and low-density neighborhoods in all re-zonings, land use plan amendments, and site approvals.

POLICY 01.03.04 Consider the preservation of established single family neighborhoods in all rezonings, land use plan amendments and site plan approvals.

POLICY 01.03.06 Consider density and intensity revisions with an emphasis on minimal negative impacts to existing residential areas, particularly single family areas.

POLICY 01.03.11 Consider the compatibility of adjacent land uses in all Land Use Plan amendments and rezonings.

POLICY 01.03.12 The following criteria may be used in evaluating rezoning requests:

1. Density;
2. Design;
3. Distance to similar development;
4. Existing adjoining uses;
5. Proposed adjoining uses;
6. Readiness for redevelopment of surrounding uses; and.
7. Proximity to mass transit.

Mr. Matt Edge clarified that the application submitted for this request lists Pompano Ford Lincoln as the applicant, not the City of Pompano Beach.

Mr. Stacer asked in reference to staff's 3rd condition if these design standards includes the hiding of ramps.

Ms. Dolan confirmed this and stated that the applicant is aware of the design requirements. She stated that they have provided preliminary plans but that these plans have not been attached to this flex allocation request.

Mr. Steve Wherry (200 E Broward Boulevard, Fort Lauderdale, FL) presented himself to the Board as the applicant's attorney.

Mr. Stacer suggested that he could give just one presentation for this item and the following item since they are connected.

Mr. Wherry provided a PowerPoint presentation to the Board that overviewed both the flex and rezoning requests. He began by giving an overview of the property and surrounding area and explained that because a portion of the property has a residential land use classification, either a land use plan amendment or flex application would need to be approved. He stated that they have chosen to apply for flex allocation.

Mr. Wherry noted some public benefits of the proposal, including a traffic reduction of approximately 60 trips per day, enhanced landscaping and security features, and that it would allow the zoning district boundary to end at a street instead of mid-block. He also noted that the dealership is changing how they store inventory and that this reflects a growing national trend in having more inventory on site for customers. He stated that they sought to purchase land to the east but property owners were not willing to engage in negotiations.

Mr. Wherry noted that the item was tabled from the previous meeting due to the inability to include all of the abutting properties. He explained, however, that the final property was finally placed under contract and will now be included in the site plan. With this larger footprint the structure would feature a four-story height limit and an enhanced landscape buffer. The applicant will also be proposing a declaration of restrictive covenant, restricting the uses allowed to minimally invasive uses.

Mr. Wherry presented a conceptual site plan of the proposed surface lot to the Board. He described the landscape buffer and explained that the design would only allow cars to leave the neighborhood. He noted that it will be gated and only operable by the car carriers. The trucks will enter the lot and be completely off of NE 28 Street to unload the cars. While Phase 1 creates a surface parking lot, Phase 2 removes some of the pavement and adds a parking structure. The north part of the parcels will become a linear park and there will be a connection between the existing fence of the neighbors to the west and a new wall that will be installed by the applicant. In addition, the applicant is willing to construct fencing around other portions of the property to prevent any trespassing between the garage and neighboring properties. He noted that the garage will have residential features on the north and west sides and presented several renderings of it. Mr. Wherry acknowledged that there are pending design standards for garages and that this project will comply with them. He stated that he has had a total of 12 meetings, including with the neighbors, the Zoning Board of Appeals, and other members of the public. He presented shadow studies that were done in response to neighbor request.

Mr. Stacer asked if items in the backup are still relevant, in particular regarding the need for the applicant to acquire an additional property.

Ms. Dolan stated that the backup includes DRC comments from October and some of the circumstances have changed since then.

Dr. Mills asked if subsequent owners could do anything in the newly zoned B-3 property.

Ms. Dolan reiterated that there would be deed restrictions put on the land.

Dr. Mills asked if they would also be restricting the height.

Ms. Dolan stated that there is no restriction on the height in staff's conditions but the Board might wish to consider this.

Mr. Wherry added that the reason for including a conceptual plan with this application is so that if the design changed to a large degree the application would need to be reviewed again. The plan does call for a four story structure.

Ms. Eaton disclosed that she has met with Pompano Ford Lincoln and has attended meetings with them during Cresthaven civic association meetings. She stated that she would support a restriction on allowable height. She noted that the applicant has been very active in meeting with the neighbors.

Mr. Hill asked if there could be a height restriction added.

Ms. Dolan confirmed that a height restriction can be added.

Ms. Kovac asked if the neighbors were in agreement with the applicant planting trees on property they do not own.

Mr. Wherry stated that they have had conversations but there has been no agreement.

Mr. Stacer asked if anyone in the audience wished to speak.

Mr. Marco Mello (1643 NE 28 Court, Pompano Beach, FL) stated that he lives across the street to the proposed “storage facility” and is opposed to the flex and rezoning request. The dealership would be able to increase the dealer stock from 450 to 950 cars and more than half would be stored in the garage. He is concerned that customers would be able to enter the garage and stated that the garage could become the de-facto showroom. He is also concerned with the traffic of large trucks driving through the neighborhood and feels that property values would fall. He stated that in his experience as a real estate agent informs him that it is not possible for this structure to appear as a residential building.

Ms. Laurie Lanhart (1671 NE 28 Court, Pompano Beach, FL) stated that this proposal is not in the best interests of protecting the neighborhood. She stated that the applicant has shown large trees in the renderings, but that growing trees takes a very long time. She asked the Board if they are familiar with the neighborhood and stated that it is a family neighborhood. She asked Mr. Wherry how he could make a presentation trying to argue that this will be a positive development for their community. She asked the Board to vote against the proposal and stated that it will negatively impact her and neighboring properties.

Ms. Coleen Weaver (1614 NE 28 Ct, Pompano Beach, FL) stated that zoning codes are put into place to protect residents from large corporations. She feels that the project does not meet the needs of the community nor the criteria required for commercial to residential change. She stated that the property values will decrease and the noise levels will increase. She noted that the houses may have lead and asbestos and hopes that they will check before demolishing them. She also stated that this rezoning would confer a special privilege to the applicant. She commented lastly that she will not be able to wake up to watch the sunrise.

Mr. Hill asked if the applicant has met with her regarding the proposed wall height.

Ms. Weaver stated that she has met with them, but that their fencing proposal isn't going to help with anything.

Ms. Sharon Henly (3801 NE 29 Ave, Lighthouse Point, FL) stated that she is president of L&H Land Corporation. She stated that her company has recently invested in a nearby apartment

building and believes that the application has good merit and that it should be approved. She stated that she believes it will serve as a good transition between residential and commercial in the area.

Ms. Janine Heart (1529 NE 28 Ct, Pompano Beach, FL) stated that there have been trucks in the neighborhood in the past and doesn't understand how the declaration of covenants would prevent other uses when the zoning is being changed now. She stated that she cannot understand how this proposal could even be entertained.

Mr. Jasper Hefco (1585 NE 28 court, Pompano Beach, FL) stated that he bought his house two years ago and that he doesn't want to live in an industrial neighborhood. He feels that no one would want this in their own neighborhood and that this will ruin his home.

Mr. Wherry stated that they feel the project will be an improvement over the existing conditions since currently there is very little screening of the commercial uses to the residential. He presented to the Board a comparison of neighborhood property values based on the Broward County Property Appraiser's records and stated that the properties closer to the commercial use have higher valuations. He noted that both the dealership and the neighborhood have been there for a long time and there has been a relationship between the two. He would not say that there won't be customers in the garage, but stated that the customers will not be driving the cars out. He stated that proposed trees will be planted at a height of 16 feet. The applicant will work with staff to specify trees that are higher than the required height. He stated that the demolition activity will occur very quickly and that it will be through saw-cut demo, not pounding. There is a requirement for lead and asbestos testing during demolition. He stated that the proposal is something that is not industrial in nature, but rather residential in character that will be an improvement to the neighborhood. He noted that the zoning code would allow the development of up to 6 stories, but the applicant has restricted the development to 4 stories. He stated that the business is an important stakeholder and that this location has 110 employees who patronize the businesses in the City. He stated that the project has the support of the City's Economic Development Committee.

Mr. Hill asked the applicant to elaborate on the 60 trips per day reduction that he testified.

Mr. Wherry stated that single family homes generate 10 trips per day. There would be no local trips from the business.

Mr. Hill asked about the public meetings they had and if they are documented.

Mr. Wherry stated that there were 3 neighborhood public participation meeting, and 1 cresthaven civic association meeting they attended. He stated that he thinks the project was well received by the civic association.

Mr. Klosiewicz asked staff if a parking garage could be built on the existing parking lot.

Ms. Dolan stated that there would be setback challenges to build to the maximum height of 105 feet due to setback requirements. Additionally, the structure would be more expensive if it had a smaller footprint. They could, however, build a parking garage on just the existing parking lot.

Ms. Eaton stated that there are permits required for demolition. She noted that the applicant could build up to 6 stories without having to provide any extra buffering. She thinks that it is favorable to have a design firm work with the neighbors to improve the site. She asked if the applicant is willing to add the height restriction to the restrictive covenant.

Mr. Wherry stated that he would like to have a little more height allowed if it was deed restricted because of the difficulty of amending it. He noted that any significant changes would require a re-review of the Flex Application.

Ms. Dolan commented that there are pending design standards for parking garages which might cause some minor changes in order to be compliant.

Ms. Eaton stated that she has been to the sites and has been following the issue on social media. She reiterated that what could be done by right may not be as good as the improved design being proposed, and that the design should try to incorporate additional residential features. She commented that the B-3 properties that are adjacent to the neighborhood along Federal Highway already have the right to build to 105'. She noted that the garage could be 6 stories on the existing parking lot land or 4 stories with an improved design.

Ms. Laurie Lanhart asked how many oak trees are on 28th Court.

Ms. Eaton stated that the applicant testified that they would add to the existing trees on the street.

Mr. Wherry showed an aerial image and identified the oak trees. He stated that any native trees will be preserved.

Mr. Maro Mello stated that many of the the homes on the street were built before the city was incorporated and that the the Broward County Property Appraiser is not aware of their current condition. He stated that the figures shown by the applicant are very misleading.

Mr. Wherry stated that he does not believe that there are inaccuracies in the Property Appraiser information. He noted that the valuations would have to be looked at on a case-by-case basis.

Mr. Jasper Hefco asked what additional setbacks would be needed if the property was not rezoned and expanded. He also asked if the garage could be built and how many cars it would hold.

Ms. Dolan stated that the additional setback from above 40 feet would be 1 foot back for every 1 foot in height.

Mr. Wherry stated that a garage could be built on the existing parking lot footprint. The majority of what would be built in the existing single-family residence lots would be landscaping.

Dr. Mills asked why staff is uncomfortable with the 4-floor restriction.

Ms. Dolan stated that the deed restriction on the height would be unnecessary when the flex application would limit the floors to four.

Ms. Eaton added that any additional floors would need to go back through the Planning and Zoning Board and the City Commission

Mr. Stacer closed the public hearing.

Mr. Hill commented that an earlier design submitted showed a five story structure in a scenario in which they were not able to acquire the last abutting lot on 28th Court.

Mr. Stacer asked about the public meetings and what was discussed.

Mr. Wherry stated that he were asked to address shadowing, whether neighbors would see the cars in the garage, and lighting issues. The lighting would be shielded according to code.

Ms. Dolan added that that she attended two of the meetings and Jennifer Gomez attended a third. She stated that the project has evolved to include more green space.

Mr. Hill thanked those that participated in the public hearing. He noted that the Board has not been swayed by the businesses who would benefit from the items brought before the Board and that he understands their concerns as a property owner himself. He acknowledged that the garage will be built regardless, but this proposal would result in a better design. He noted that the buffering proposed would improve the impact and asked if there is anything the applicant could do for sound dampening.

Mr. Wherry stated that currently the trucks stop on the side of the road whereas with this development they would be parking within the structure which will help with the noise. He stated that it is something that will be looked into and that they are hoping to find additional methods of mitigating sound.

Bob Lamonte (1537 SW 34 Lane, Miami) presented himself as a representative of the applicant. He stated that the ground floor will be completely secured and that louvers could be used to baffle the sound and stop people from getting in. He explained that the six properties were purchased in order to keep the height of the building down.

Dr. Mills asked why the applicant would not just build the higher garage.

Mr. Wherry stated that the taller garage with a smaller footprint would make the maneuvering of the cars more difficult.

Ms. Kovac asked that the applicant revisit the demolition of the homes to make sure it is as quick and as clean as possible.

Mr. Wherry stated that the demolition concerns have been continuously expressed, and will be addressed in a manner that is the least impactful possible.

MOTION was made by Rhona Eaton and seconded by Richard Klosiewicz to recommend approval of Flex Unit request PZ#17-0500003 per staff's Alternative Motion #1.

Discussion:

Mr. Hill asked if the height restriction should be included.

Ms. Eaton responded that if the height increased above 4 floors the Flex Allocation request would have to be re-reviewed anyway.

Vote:

Rhonda Eaton, Richard Klosiewicz, Joan Kovac and Fred Stacer voted in support and Tony Hill and Jerry Mills voted in opposition. Therefore, the motion was approved.

ZONING MAP AMENDMENTS (REZONING)

5. CITY OF POMPANO BEACH / NE 28 COURT REZONING Planning and Zoning #17-13000005

Consideration of the request by **STEVEN WHERRY** on behalf of **POMPANO FORD LINCOLN, INC** to rezone the properties from RS-4 (Single Family Residence 4) to B-3 (General Business) in order to facilitate the development of a surface parking lot (Phase 1) and, eventually, a parking structure, to support business activities at the Ford dealership, the adjacent property owner. Pompano Ford Lincoln either owns or has a purchase contract on all of the six single-family homes subject to this rezoning. The property is located west of Federal Highway and south of NE 28th Court in the Cresthaven neighborhood, legally described as follows:

LOTS 1, 2, 3, 4, 5, 6 OF BLOCK 1 ACCORDING TO THE PLAT OF CRESTHAVEN NO. 3 AS RECORDED IN PLAT BOOK 37, PAGE 11 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

AKA: 1628 NE 28th Court, 1642 NE 28th Court, 1656 NE 28th Court, 1670 NE 28th Court, 1684 NE 28th Court, 1698 NE 28th Court
ZONED: RS-4 (Single Family Home 4)
TO: B-3 (General Business)
STAFF CONTACT: Jean Dolan (954)786-4045

Ms. Jean Dolan stated that this is the companion item to the previous request and as such, she proceeded directly to the staff recommendations.

Given the information provided to the Board, as the finder of fact, staff provides the following recommendation and alternative motions, which may be revised or modified at the Board's discretion.

Alternative Motion I

Recommend approval of the rezoning request from RS-4 to B-3.

The rezoning is recommended for approval with the following conditions:

- (1) Subject to approval of the nonresidential flexibility application to allow commercial development in a residential land use category without a City and County Land Use Plan amendment;
- (2) Subject to the recordation of a Declaration of Restrictive Covenants limiting the permitted B-3 uses on the area to be rezoned to:
 - Dwelling, live/work*
 - Dwelling, multi-family*
 - Arboretum or botanical garden

- Community garden
- Parking deck or garage
- Parking lot

**Subject to the allocation of flexibility units*

- (3) Subject to the site plan showing no left turn from the proposed access drive connection to NE 17th Avenue.
- (4) Subject to the commitment that no loading or unloading of car carrier trucks will occur in the right-of-way of NE 28th Street or any other public right-of-way and car carrier trucks will be required to exit the site through the parking structure travelling north on NE 17th Avenue to eliminate cut through car carrier trucks deeper into the Cresthaven neighborhood. This condition must be specified on the site plan ultimately approved for the garage.

Alternative Motion II

Table this application for additional information as requested by the Board.

Alternative Motion III

Recommend denial as the Board finds that the request is not consistent with the following goals, objectives and policies of the Comprehensive Plan, specifically:

01.02.02 Consider the preservation of established single-family and low-density neighborhoods in all re-zonings, land use plan amendments, and site approvals.

01.03.06 Consider density and intensity revisions with an emphasis on minimal negative impacts to existing residential areas, particularly single family areas.

01.03.11 Consider the compatibility of adjacent land uses in all Land Use Plan amendments and rezonings.

Mr. Stacer asked what the setback on the north side would be.

Ms. Dolan stated that because it is a through lot, either the north or south side could be considered the front. She stated that it could be argued that the west side could be the rear.

Mr. Stacer commented that B-3 has a 0 foot front and side yard setback requirement, but a 30 foot rear yard requirement. He asked if it is coincidental that the proposed site plan for the parking lot has a 30 foot setback from NE 28th Street.

Ms. Dolan responded that it is coincidental.

Mr. Wherry (200 E Broward Boulevard, Fort Lauderdale, FL) stated that they concur with staff's findings and recommended conditions. He refrained from giving another presentation given that the previous item was for the same property.

Mr. Stacer stated that he would like to see the north side of the property considered the rear of the property just in case the property was to change hands in the future.

Mr. Wherry responded that he would not object to this.

Mr. Stacer asked if the fourth condition of staff's recommendation should also include the same restriction for a "parking lot" in addition to a parking structure.

Mr. Wherry agreed and stated that this could be noted.

Mr. Marco Mello (1643 NE 28 Court, Pompano Beach, FL) presented himself to the Board again. He stated that he wished his previous remarks be added to the record for this request and added that the applicant only owns two of the six abutting homes and that the other four are under contract with the provision that the rezoning is approved. He stated that he wished the residents were asked if they would like to take the chance that the applicant decide to not build a 6 story structure on their existing lot instead of everyone just assuming that they are definitely going to build something. He feels that if the proposal was denied that the lot that they own would continue to just be used as a parking lot and a structure would not be built. He asked the Board to not approve the request because they may not build anything.

Ms. Laurie Lanhart presented herself to the Board again. She stated that the applicant could add this to their existing facility without opposition from neighbors. She reiterated that if they were facing this prospect in their neighborhood they would be just as vehemently opposed. She stated that the homeowners in the street bought in good faith because the zoning is residential.

Ms. Colleen Weaver presented herself to the Board again. She asked what would happen to the overhead power lines.

Mr. Wherry responded that the power lines could be relocated during the site plan process.

Ms. Weaver asked if there would be a power stoppage.

Mr. Wherry stated that he did not know if there would be an outage.

Mr. Bob Lamonte stated that new lines would be built, energized, and then the old ones would be disconnected. Therefore, there would be no outage.

Ms. Janine Heart (1529 NE 28 Court, Pompano Beach, FL) presented herself to the Board again. She stated that exiting trucks would drive past the plaza to the east. She also asked again if the car carriers would still unload cars on 28th street.

Mr. Wherry stated that the conflict with the existing plaza would be minimal because the proposed parking use would generate significantly less trips than there would be if there were single-family residences. He stated that they estimate an average of only 2 trips per day. He stated that the unloading of the cars will only occur within the site per the recommended condition of staff. He stated that the applicant cannot add to the existing property because the stoppage of business that this would require is not financially feasible. He added that only car carriers will exit the property to the north on 17th Avenue. He stated that the current height proposed is only 41 feet 6 inches, but noted that screening and architectural elements could possibly increase the overall height. He

stated that not expanding could put the franchise at risk and that there is no alternative that they know of.

Mr. Stacer asked where the 41' 6" is measured to.

Mr. Wherry responded that it is to the roof line or the floor of the upper deck.

Mr. Stacer closed the public hearing.

MOTION was made by Rhonda Eaton and second by Joan Kovac to recommend approval of the rezoning PZ #17-13000005 per Alternative Motion I as described in the staff report. All voted in favor of the motion with the exception of Tony Hill and Jerry Mills; therefore, the motion passed.

8. CHAPTER 155 ZONING CODE TEXT AMENDMENTS: EMERGENCY GENERATORS

Consideration of proposed Text Amendments to Chapter 155.4203 and 155.4209 in order to require Assisted Living Facilities (ALFs) and Nursing Homes to have permanent emergency generators.

Ms. Dolan, Principal Planner, introduced herself to the Board. She stated that following Hurricane Irma in September 2017 and the tragic death of several individuals housed in nursing homes with no backup power generation capabilities, the Florida Department of Elder Affairs and the Agency for Health Care Administration issued temporary, emergency rules on September 16, 2017, requiring Assisted Living Facilities (ALFs) and nursing homes in the State to implement a plan within 60 days (by November 15, 2017) providing for the installation, operation, maintenance and testing of a generator system to maintain an ambient temperature of no more than 80 degrees for a period of at least 96 hours, in the event of the loss of electric power. The City Staff has prepared the attached draft ordinance to permanently require nursing homes and ALFs to provide electric generators that meet these and more stringent standards.

At the October 24, 2017 City Commission hearing, Mayor Fisher brought up the issue of requiring a permanent requirement for generators at ALFs and nursing homes and requested Staff to prepare the necessary amendments to the City's Code of Ordinances.

The proposed text amendments to Article 3, Use Standards for ALFs and nursing homes found in the staff report require all existing and new facilities to provide a permanent emergency generator to provide the capacity and on-site fuel storage to keep the facility at the maximum of 80 degrees for a minimum of 96 hours and also provide for the electric generation capacity to run all electrical devices that protect life and safety for the facility's residents and patients. There is a waiver provision for constrained sites where these new facilities might need to be placed in a parking space or landscape island.