




INTEROFFICE MEMORANDUM FROM THE DEVELOPMENT SERVICES DEPARTMENT

TO: Mayor, Vice-Mayor, and City Commission of the City of Margate

THRU: Elizabeth Taschereau, Development Services Director

FROM: Andrew Pinney, AICP, Senior Planner 

DATE: October 16, 2020

RE: **603 Melaleuca Drive- Reasonable Accommodation Appeal To The City Commission With Additional Staff Analysis Based On Additional Information Submitted by the Applicant**

This memo is issued to provide an analysis of the “NOTICE OF APPEAL OF CITY MANAGER’S AUGUST 6, 2020 DENIAL OF MARGATE CARE FOR HEROES’ REASONABLE ACCOMMODATION REQUEST TO OPEN A VETERAN’S CARE FACILITY AT 603 MELALEUCA DRIVE.” (Notice of Appeal) The appeal was submitted on August 28, 2020 by attorney Kyle Teal, counsel for the Applicant. The Applicant is identified in the Notice of Appeal as Quality of Life, Corp., doing business as Margate Care for Heroes (MCH) (hereinafter referred to as “Applicant). The fictitious name “Margate Care For Heroes” was registered with the Florida Division of Corporations on July 20, 2020, just one day prior to the City Manager’s reasonable accommodation public hearing for same. A copy of the fictitious name registration and the corporation registration has been attached to this memo as Exhibit A. This memo, in conjunction with the previously issued staff memo dated July 17, 2020 which analyzed the initial reasonable accommodation application submitted, will explain why the request is not reasonable. Since the denial by the City Manager, counsel for the Applicant has submitted additional information. Some of the new information submitted is not relevant and need not be addressed. **Staff recommends upholding the City Manager’s denial of this reasonable accommodation request because it is neither reasonable nor necessary, and would amount to a fundamental alteration of the City’s zoning scheme.**

Most of the critical information needed to reach a decision on this application was analyzed in the first memo, but a substantial amount of new (and some different) material has been submitted by counsel for the Applicant since that memo was issued. In general, an “appeal” is traditionally a review of the decision made by a lower court or administrative body based solely on the

information and documentation presented at the time the decision was made. To the contrary, the Applicant seeks a new “hearing” before the City Commission with new, extensive additional information, not provided to or considered by the City Manager. The transcript of the public hearing before the City Manager has been provided along with the original information provided to him prior to his decision. Thus, staff recommends the City Commission should consider only what was considered by the City Manager and not consider the new post-decision information in deciding this “appeal.”

However, should the City Commission decide to consider all information provided by the Applicant, staff has provided the following analysis of the new information provided with the Notice of Appeal.

IS THE REQUESTED ACCOMMODATION REASONABLE AND NECESSARY?

The subject property is a 43,675 square foot (~1-acre) site located at 603 Melaleuca Drive. The subject property is currently comprised of Lots 1, 2, and 3, of Block 3, of the HAMMON HEIGHTS SECTION 2 plat (34-46). Lot 3 of Block 3 is located within the One-Family Dwelling R-1 district. Lots 1 and 2 are located within the Multiple Dwelling R-3 zoning district. The property owner acquired Lot 3 on September 25, 2019 and then consolidated all three lots into a single parcel. Despite these actions, the subject property is currently located in two different zoning districts. Staff acknowledges that the prior memo only identified the subject parcel being in the R-3 zoning district, but the subject property is in fact located partially within the R-1 district and partially within the R-3 district. The subject property is not only partially located within a single-family zoning district, it is contiguous to five single-family home sites on two property lines. This plays a critical factor in evaluating impacts to the neighborhood character, and thus further supports the determination that the requested accommodation amounts to a fundamental alteration to the City’s zoning scheme. A copy of the City’s Zoning Map, and localized image of the Broward County Property Appraiser’s parcel map have been attached to this memo as Exhibits B and C to help clarify the zoning district boundaries relative to the subject property.

In multiple instances, counsel and other professionals on behalf of Applicant likened the proposed MCH facility to a nursing home.

In the Notice of Appeal, counsel wrote:

“As Mr. Hall indicates, the nursing home use under the Institute of Transportation Engineers’ (ITE) Trip Generation manual, is the closest use category in the ITE to MCH’s current Business Plan.” (pg. 14-15, Notice of Appeal)

In Applicant’s Exhibit 7, Mr. Hall wrote:

“In order to determine the traffic impacts associated with the proposed residential rehabilitation facility, an analysis of trips expected to be generated by both the prior and proposed developments was conducted. Trip generation characteristics provided in the Institute of Transportation Engineers (ITE) Trip *Generation*

manual, 10th Edition, were consulted and the trips generated by the prior multi-family residential land use (ITE Code 220 - Multi-Family Housing, Low-Rise) were estimated, as was the (ITE Code 620 - Nursing Home) land use. Note that Nursing Home was selected as the proposed development's land use. ITE's manual does not contain trip generation characteristics for a residential rehabilitation facility. However, nursing homes have similar operational and trip generation characteristics and, thus, offer the best match to the proposed land use." (Exhibit 7 – pg. 1, Margate Cares for Heroes Traffic Statement, prepared by Thomas A. Hall, Inc.)

"It is our understanding that the application for a reasonable accommodation for Margate Cares for Heroes calls for 36 beds. The city's parking code, Article XXXIII, Section 33.3, for convalescent homes, nursing homes, retirement homes and other such facilities with operational characteristics similar to the proposed development is based on beds. Therefore, a review of the project's parking requirements using the ITE's *Parking Generation* manual, 5th Edition, was completed assuming the proposed number of beds as the independent variable. A copy of the parking generation characteristics information from the ITE manual is enclosed." (Exhibit 7 – pg. 2, Margate Cares for Heroes Traffic Statement, prepared by Thomas A. Hall, Inc.)

In Applicant's Exhibit 3 – Declaration of C. Wesley Blackman, AICP, Mr. Blackman wrote:

13. Article XXXIII contains the following Section 33.3. - Amount of off-street parking. (6) Convalescent homes, nursing homes, retirement homes, and other similar institutions for the care of the aged and inform [sic]: One (1) parking space for each five (5) beds for patients or inmates, and one (1) parking space for each employee. (7) Uses not specifically mentioned: The requirements for off-street parking for any residential uses not specifically mentioned in this section shall be the same as provided in this section for the use most similar to the one sought, it being the intent to require all residential uses to provide off-street parking as described above. All non-residential uses shall be required to provide off-street parking, in accordance with an approved Master Parking Plan.
14. In the event that the facility provides 36 client beds, according to the above parking standard, the required number based upon the number of beds would be eight (8) parking spaces. The site plan and staff report indicate that there are 21 parking spaces on the property, with one handicapped space. According to the Code, this limits the amount of employees on the property at any one time to a total of 13. If the number of client beds happen to be less, then there may be more parking for staff, the total number of employees on site at one time could be higher. This could be part of an approved Master Parking Plan as called for in Article XXXIII." (Exhibit 3- Exhibit C – Declaration of C. Wesley Blackman, AICP)

The above citations of counsel and two hired experts for the Applicant parallel the proposed use to a nursing home. However, a nursing home is not specifically permitted within the R-1 or R-3 zoning districts, so the analogy is not applicable. On the other hand, community residential homes may be permitted with certain placement restrictions and capacity limitations. The United States Department of Justice (DOJ) provides guidance to the public in an article titled, GROUP HOMES, LOCAL LAND USE, AND THE FAIR HOUSING ACT. This article provides guidance as to when a reasonable accommodation should and should not be granted. Coincidentally, one of the examples offered indicates, a fifty-bed nursing home would not ordinarily be considered an appropriate use in a single-family neighborhood, for obvious reasons having nothing to do with the disabilities of its residents, and would likely create a fundamental change in the single-family character of the neighborhood. Thus, the DOJ advises that such a use located within a single-family district would not be a reasonable accommodation because it would likely create a fundamental change in the single-family character of the neighborhood.

The Applicant's consultant who provided a traffic statement (that was not provided to the City Manager, but was first submitted with the Notice of Appeal as Applicant's Exhibit 7) used the Institute of Transportation Engineer's (ITE) Trip Generation Manual, 10th edition, to anticipate possible traffic generation of the proposed facility. In this Thomas A. Hall, Inc. traffic statement, the consultant used ITE land use code 620 for nursing home for the proposed facility, and compared it to a residential use, ITE land use code 220 for multifamily housing, low-rise. It is notable that ITE provides three different independent variables for estimating trip generation for nursing homes and five different independent variables for estimating trip generation of multifamily housing (low-rise). The Thomas A. Hall, Inc. traffic statement selected the lowest of the three independent variables for estimating nursing home trips, and applied the highest of the five independent variables for estimating multifamily housing trips. ITE offers the following independent variables for nursing home daily trip generation:

- 6.64 trips per 1,000 square feet of area
- 3.06 trips per bed
- 2.91 trips per employee

Review of the numbers yielded from each of the variables shows:

- Square footage yields an estimated 59 trips per day
- Bed count yields an estimated 110 trips per day
- Number of employees yields an estimated 143 trips per day

When compared to the other two variables, square footage clearly represents the lowest trip analysis. Further, when considering the details of the proposed facility it is clear why the square footage variable should not be considered. The Business Plan identifies 49 employees for the proposed facility. While discussing parking, counsel states, "At most, one could expect a dozen employees working at the facility at once (including shuttles for residents)." (pg. 15, Notice of Appeal). Given the nature of the facility, it is logical to assume that staff will work in shifts in order to provide care and services needed on a twenty-four-hour-a-day basis, seven days a week.

Over the course of three shifts a day, with 12 staff per shift, the staff will generate 72 trips per day. The traffic generated by staff alone is greater than the 59 trips estimated by Thomas A. Hall, Inc., and this number does not include *any* trips generated by visitors, deliveries, patients, or shuttle services for patients.

Page 5 of the MCH business plan states that there will be 49 employees. Applying the independent variable of 2.91 trips per employee, we can accurately estimate that the MCH facility would generate an estimated 143 trips per day. When the MCH trip counts of 143 are compared to the prior use of 10 low-rise multi-family dwelling units (ITE Code 220), which was estimated by Thomas A. Hall, Inc. to generate 73 trips per day, the proposed MCH facility will generate nearly double the amount of traffic. Doubling the amount of traffic generated by this site would substantially alter the nature and character of the residential neighborhood.

It was revealed that the ITE land use description for nursing home was not consulted by counsel prior to writing this statement, “MCH’s facility will generate less traffic than a nursing home; however, given that most – if not all – residents will not need to park a vehicle because they will be driven to the facility by an MCH shuttle, or by a friend or family member.” (pg. 14-15, Notice of Appeal) Although PTSD and substance abuse addiction may be considered disabilities, they are not generally considered to be ones that prevent the afflicted person from driving a vehicle. Indeed, a nursing home is described by the ITE as, “A nursing home is any facility whose primary function is to provide care for persons who are unable to care for themselves,” and “Nursing homes are occupied by residents who do little or no driving; traffic is primarily generated by employees, visitors, and deliveries.” The Applicant’s proposed substance abuse and mental health treatment center does not limit its patients to those that are unable to drive a vehicle. Although a shuttle service is mentioned (which would increase the number of daily trips) it is not mandatory that it be used. Clearly, the MCH facility would NOT generate *less* traffic than a nursing home; it would generate substantially more on the local residential roads.

The ITE’s 10th edition of the Trip Generation Manual offers the following independent variables for estimating the daily trip generation of multifamily housing (low-rise):

- 7.32 trips per dwelling unit (general urban/suburban)
- 6.31 trips per occupied dwelling unit (general urban/suburban)
- 1.42 trips per resident (general urban/suburban)
- 4.41 trips per occupied dwelling unit (dense multi-use urban)
- 1.67 trips per resident (dense multi-use urban)

Given the current character of the neighborhood where the subject property is located, it would be most appropriate to apply the variables that ITE offers for “general urban/suburban.” The 2018 ACS 5-Year Estimates from the United States Census Bureau indicate that the average household size in Margate is 2.56 persons per household. Applying the three independent variables for multifamily housing in a general urban/suburban setting would yield the following estimated daily trips:

- Number of units yields 73 trips per day

- Number of occupied units (assuming 100% occupancy) yields 63 trips per day
- Number of residents (assuming 2.56 persons per unit) yields 36 trips per day

It seems more than coincidental that the Thomas A. Hall, Inc. traffic statement chose the independent variable which yielded the lowest trip generation results for a nursing home, and chose the independent variable which yielded the highest trip generation result for multifamily housing. The traffic statement provided by the Applicant appears to have been written with the specific purpose of putting the MCH proposed facility in the most favorable light rather than performing an objective analysis. Staff contends that the independent variable most appropriate for this analysis is the number of residents. Again, looking at the scale of the other studies points any reasonable person to using a variable other than what the Thomas A. Hall, Inc. traffic statement relied upon. In the studies compiled by ITE that lead to creating an average of 7.32 daily trips per dwelling unit, the average size of multifamily development in those studies was 168 units, or 1,580% larger than the subject property and offer no clarity as to the bedroom counts or populations of these developments. In the information compiled by ITE that lead to creating an average of 1.42 daily trips per resident, the average number of persons per dwelling unit was 2.72 persons, or 6.25% larger than the average persons per household in Margate. Further supporting this position is the land use description that ITE offers for multifamily housing (low-rise), which includes, “It is expected that the number of bedrooms and number of residents are likely correlated to the number of trips generated by a residential site.” If considering the appropriate independent variables, the proposed MCH facility would generate nearly four times the number of trips per day, which would undeniably alter the nature and character of the residential neighborhood.

In its current condition, the subject property provides a total of 22 parking spaces. In reviewing the parking analysis provided by Wes Blackman, for the Applicant, staff agrees that the appropriate parking requirement under Section 33.3 of the Margate Zoning Code would in fact be ‘Convalescent homes, nursing homes, retirement homes, and other similar institutions for the care of the aged and infirm.’ Staff also agrees that the proposed number of 36 beds would require eight parking spaces for the 36 beds. However, staff diverges from Mr. Blackman’s parking analysis when it comes to the parking requirements for the facility staff. The Code clearly requires one parking space for *each* employee. Page 5 of the Business Plan indicates the proposed use will employ a staff of 49. The MCH facility requires a total of 57 parking spaces. See the following excerpt from the provided Business Plan as well as applicable language from Section 33.3 of the Margate Zoning Code:

“Quality of Life will employ approximately 49 (part and/or fulltime) employees in the following positions:

Chief Operating Officer	Licensed nurses
Compliance Officer	Case Managers
Admissions Director	Mental Health Counselors
Drivers	Behavioral Health Technicians
Group Therapy Facilitator	Certified Massage Therapist
Janitorial/Cleaning Staff	

Chef
Assistant Chef
Secretarial
Medical Director” (pg. 5, Business Plan)

Yoga Instructor

“Section 33.3. - Amount of off-street parking.

The off-street parking required by this article *shall be provided and maintained* on the basis of the following minimum requirements:

...

(6) *Convalescent homes, nursing homes, retirement homes, and other similar institutions for the care of the aged and infirm:* One (1) parking space for each five (5) beds for patients or inmates, and one (1) parking space for each employee.

(7) *Uses not specifically mentioned:* The requirements for off-street parking for any residential uses not specifically mentioned in this section shall be the same as provided in this section for the use most similar to the one sought, it being the intent to require all residential uses to provide off-street parking as described above. All non-residential uses shall be required to provide off-street parking, in accordance with an approved Master Parking Plan.

(8) *Fractional measurements:* When units or measurements determining number of required off-street parking spaces result in requirements of fractional space, any such fraction shall require a full off-street parking space.”

The subject property is deficient in parking by 35 parking spaces (159%) under Section 33.3 of the Margate Zoning Code. This poses a detrimental threat to the nature and character of the surrounding residential neighborhood and again, amounts to a fundamental alteration of the City’s zoning scheme. This also presents a possible substantial financial burden to the City in trying to police nuisance parking caused by the proposed use and would severely impact the quiet neighborhood streets.

Counsel attempts to dismiss hard facts established by both zoning and building codes with the following assertion:

“Despite the City’s baffling analysis, at no time will all of MCH’s 49 employees be at the property at the same time. And MCH will certainly never come anywhere near the Florida Building Code occupancy limit of 104 occupants, as the City comically suggests.” (pg. 15, Notice of Appeal)

The parking requirements established in Section 33.3 of the Margate Zoning Code do not offer any relief or exceptions to the rule based on staffing schedules nor third party opinions of the Applicant’s consultants. The Code is the Code. Further, the facility modifications submitted in 2015 under permit 15-1248 were submitted by professionals hired by the property owner. This

design and the established maximum occupant load of the subject property are the result of actions taken by the property owner, but now counsel attempts to undermine the Florida Building Code by stating that these facts are ‘comical.’ To the contrary, these facts are well established and applicable to the subject property and this application, and therefore must be taken into consideration.

Further evidence that the request is unreasonable is that the City’s current zoning scheme permits long term care facilities, such as the use that is being requested, by right and without size or locational restrictions in other zoning districts. Group living of unrelated persons is permitted within the R-1 and R-3 districts, with limitations. Restrictions that apply universally in the R-1 and R-3 districts include the definition of “family.” This definition limits the number of unrelated individuals which may live together in a dwelling. Section 2.2 of the Margate Zoning Code provides the following definition of family:

“For the purposes of this zoning ordinance, a family shall be defined as one (1) person, or a group of two (2) or more persons living together and interrelated by bonds of consanguinity, marriage or legal adoption, **or a group of no more than three (3) unrelated persons**, occupying the whole or part of a dwelling as a separate housekeeping unit with a single set of culinary facilities. The persons thus constituting a family may also include gratuitous guests and domestic servants. Any person under the age of eighteen (18) years whose legal custody has been awarded to the state department of health and rehabilitative services or to a child-placing agency licensed by the department, or who is otherwise considered to be a foster child under the laws of the state, and who is placed in foster care with a family, shall be deemed to be related to and a member of the family for the purposes of this chapter. Nothing herein shall be construed to include any roomer or boarder as a member of a family. This definition shall not supersede state or federal regulations regarding families and/or the use of real property within a residential district for community residential facilities.”

The Margate Zoning Code already accounts for and provides a reasonable accommodation for group housing of disabled persons by permitting community residential home type 1, community residential home type 2, and recovery residences in residential districts. Section 2.2 of the Margate Zoning Code provides the following definitions for these uses:

Community residential home, Type 1: **A dwelling unit that provides a living environment for homes of six (6) or fewer residents** which otherwise meet the definition of a community residential home shall be deemed a single-family unit and a noncommercial, residential use. Homes of six (6) or fewer residents which otherwise meet the definition of a community residential home shall be allowed in single-family or multifamily zoning districts without approval by the City, provided that such homes are not located within a radius of one thousand (1,000) feet of another Type 1 home or within a radius of one thousand two hundred (1,200) feet of another Type 2 home. Such homes with six (6) or fewer residents are not required to comply with the notification provisions of Chapter 419, Florida Statutes;

provided that, before licensure, the sponsoring agency provides the City with the most recently published data compiled from the licensing entities that identifies all community residential homes within the jurisdictional limits of the City in which the proposed site is to be located in order to show that there is not another Type 1 home within a radius of one thousand (1,000) feet and not another Type 2 home within a radius of one thousand two hundred (1,200) feet of the proposed home. At the time of home occupancy, the sponsoring agency must notify the City that the home is licensed by the licensing entity. For purposes of City land use and zoning determinations, this definition does not affect the legal nonconforming use status of any community residential home lawfully permitted and operating as of July 1, 2016.

Community residential home, Type 2: A dwelling unit meeting the definition of community residential home which provides a living environment for seven (7) to fourteen (14) unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of residents. Type 2 homes shall not be located within one thousand (1,000) feet of another Type 1 home and within one thousand two hundred (1,200) feet of another Type 2 home. For purposes of City land use and zoning determinations, this definition does not affect the legal nonconforming use statues of any community residential home lawfully permitted and operating as of July 1, 2016.

Recovery residence: A residential dwelling unit, or other form of group housing, that is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free and drug-free living environment. The number of unrelated residents and distance requirements set forth by Type 1 and Type 2 community residential homes shall apply to these facilities.

Section 419.001(1)(a), Florida Statutes, provides the following definition of community residential home:

“(a) “Community residential home” means a dwelling unit licensed to serve residents who are clients of the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, or the Department of Children and Families or licensed by the Agency for Health Care Administration which provides a living environment for 7 to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents.”

At the very least, these uses offer double the number of unrelated disabled individuals who may reside together in a dwelling compared to individuals who are not disabled. No further accommodations are necessary. Granting an unfair advantage goes beyond the scope and intent of a reasonable accommodation; the purpose of this process is to permit disabled individuals an

equal opportunity to use and enjoy a dwelling as much as non-disabled individuals. If the City Commission were to reverse the decision of the City Manager and approve this reasonable accommodation request, it would amount to the granting of an unfair advantage not offered to any other unrelated individuals living in a group setting.

Florida Statutes provide local governments additional guidance as to whether these built-in accommodations would alter the character of existing neighborhoods. Section 419.001(3)(b)3, Florida Statutes, provides that a local government may deny the siting of a community residential home of 7-14 residents in order to preserve the character of single-family neighborhoods, with the following guidance:

“(c) The local government shall not deny the siting of a community residential home unless the local government establishes that the siting of the home at the site selected:

1. Does not otherwise conform to existing zoning regulations applicable to other multifamily uses in the area.
2. Does not meet applicable licensing criteria established and determined by the licensing entity, including requirements that the home be located to assure the safe care and supervision of all clients in the home.
3. Would result in such a concentration of community residential homes in the area in proximity to the site selected, or would result in a combination of such homes with other residences in the community, such that the nature and character of the area would be substantially altered. A home that is located within a radius of 1,200 feet of another existing community residential home in a multifamily zone shall be an overconcentration of such homes that substantially alters the nature and character of the area. A home that is located within a radius of 500 feet of an area of single-family zoning substantially alters the nature and character of the area.”

As stated earlier in this memo, the subject property is partially located within a single-family zoning district, and therefore fails the first criteria. The subject property is also contiguous to five single family home sites, well within the radius of 500 feet prescribed by §419.001, F.S., and therefore fails the third criteria. Florida laws clearly provide that the permitting of this facility, at this location would substantially alter the nature and character of the area. Also important to note is that these standards are for facilities with a maximum capacity of 7 to 14 residents, while the Applicant is proposing a facility with 36 patients. A facility with more than double the capacity of a community residential home would no doubt create an even greater substantial alteration to the nature and character of the area.

The Applicant presents no medical explanation as to why the 36-bed capacity is necessary to address the particular needs of the prospective patients of the proposed MCH facility, but instead counsel simply writes, “It would defy logic to cap the number of clients at 14 people in this facility.” (pg. 14, Notice of Appeal) As the 36-bed capacity is not medically necessary for the

treatment of the proposed disabled persons, this reasonable accommodation request is neither reasonable, nor is it necessary.

IS THE PROPOSED USE RESIDENTIAL?

In the Notice of Appeal, counsel makes three references to ‘incidental medical uses’ permitted at the subject property related to the 2018 court order from Judge Beth Bloom. Further, counsel asserts six times that the medical treatment provided at this proposed facility would be incidental to the primary residential use. Staff is unpersuaded that an incidental medical use would permit the requested use, and staff questions whether the principal use of the proposed facility is residential. Indeed, in granting summary judgment to the City, Judge Bloom found that the City Commission had not granted a “medical use” when approving a special exception for an assisted living facility in 2015. All that was noted was that the approved residential use might provide incidental medical services to its residents.

Applicant’s counsel unconventionally attempts to conflate the meanings of ‘incidental use’ and ‘principal use’ in order to argue that a 36-bed residential treatment facility is permitted at the subject property. This is not an accurate application of the term ‘incidental.’ An incidental use is a use that may or may not occur during the course of another use or activity. A principal use is the primary function or main reason for doing something. The statements in the Notice of Appeal and the Quality of Life Group Care Facility Business Plan (Business Plan) attached to the Notice of Appeal as Applicant’s Exhibit 2 clearly identify that the principal use of this request is to provide medical treatment and services. Importantly, this is clarified by the fact that the clientele of Margate Care for Heroes are not looking for a place to live, they are seeking temporary medical treatment. The following excerpts clarify this important fact and distinction.

“Applicant, Quality of Life, Corp., doing business as Margate Care for Heroes (“MCH”), hereby submits this Notice of Appeal¹ (“Appeal”) to the City Commission and requests that the City Commission reverse City Manager Cale Curtis’ August 6, 2020, decision denying MCH’s Reasonable Accommodation Request (“RA Request”), and to approve the proposed business plan to help veterans in need by opening a 36-bed Veterans Care Facility focused on treating post-traumatic stress disorder (PTSD) and other illnesses, including incidental treatment for substance use disorder.” (Pg. 1-2, Notice of Appeal)

“Rather than inpatient detox, a Residential Treatment license would allow the facility to provide longer-term (no less than 90 days) care and services, such as group therapy.” (pg. 4, Notice of Appeal)

“MCH’s current Business Plan only seeks one of the above-listed licenses from the DCF – the license for “residential treatment level 1.” See **Ex. 2 at p. 3**. This license is described in the Florida Administrative Code as follows:

(a) Level 1 programs include those that provide services on a short-term basis. This level is appropriate for persons who have sub-acute biomedical problems or behavioral, emotional, or cognitive problems that are severe enough that they require inpatient treatment, but do not need the full resources of an acute care general hospital or a medically managed inpatient treatment program. Typically, clients have a job and a home to support their recovery upon completion of this level of care. The emphasis is clearly on an intensive regimen of clinical services using a multidisciplinary team approach. Services may include some medical services based on the needs of the client.” (pg. 9, Notice of Appeal)

The above description of Level 1 programs states that patients typically have a home to support their recovery upon completion of the program. Since the patients have a home elsewhere, does the MCH facility truly represent a residential use? Are the patients coming to this facility seeking a residence or are they seeking treatment? Without reviewing the actual license applications submitted to the State, it is difficult to assess the impacts to the neighborhood with certainty.

Moreover, staff requested licensing applications be provided which the Applicant declines to furnish. Without an understanding of what type of services and treatments are actually going to be provided under a required state license, it is difficult to assess the impacts to the neighborhood with certainty.

The DOJ website cited above further clarifies the applicability of the FHA when it states: “Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders, are not considered disabled under the Fair Housing Act, by virtue of that status.” The Business Plan references pre-screening clients to ensure motivation, but makes no mention of criminal background checks or drug testing. If the prospective patients are still using illegal drugs and/or have any disqualifying convictions in their history, then those individuals would not be considered disabled under FHA. As the Business Plan makes no mention of this, staff is not confident that the prospective clients should be considered disabled under the FHA.

Staff further questions the residential nature of the proposed facility based on statements provided by counsel and Applicant’s hired professionals. Counsel made three substantive statements in the Notice of Appeal that appear to describe the proposed facility as an institutional type facility rather than a residential use.

“MCH’s clients will reside at the facility for no less than 90 days and they will return to the facility during the course of their stay – if they leave at all (under supervision).” (pg. 18, Notice of Appeal)

“In addition, MCH provides that the following safety related procedures will be in place at all times in the facility:

- Residents will be supervised at all times.

- The program is structured such that there will be no free time or ability for residents to leave the building.
- There will be a full-time staff, 24/7, on site.
- All entrances will be monitored 24/7 by internal and/or external cameras for the protection of the residents and the staff.” (pg. 19, Notice of Appeal)

“Residents are not permitted to leave the facility unless being discharged or being escorted and supervised to and from an outside medical appointment.” (pg. 20, Notice of Appeal)

The statements above raise questions of the two-part test proffered by counsel as to when a facility is treated as a dwelling under the FHA. The second part of the test is “(ii) whether the individual intends to return to the particular location *during the course of his or her stay*.” If as counsel has clearly explained, patients are confined to the building, when are they ever presented an opportunity to choose or show intent that they would like to return to the location during the course of their stay? Given the institutional nature of this particular treatment facility, staff questions whether this should be viewed as a legitimate dwelling, or whether the use is more akin to an institutional setting which confines inmates or patients.

Further supporting the institutional like nature of MCH is the opinion of the Applicant’s professional planner, Wes Blackman. Under penalty of perjury, Mr. Blackman asserted that he had thoroughly reviewed the proposed MCH Business Plan, the definitions of the Margate Zoning Code, the R-3 district regulations, and the parking requirements described in Article XXXIII of the Margate Zoning Code. In a revealing statement, he indicated that the specific amount of parking for the proposed facility could be worked out in a Master Parking Plan.

“5. I have reviewed Quality of Life Corp.’s (d/b/a Margate Care for Heroes) (“MCH”) business plan.

10. I have reviewed Appendix A, Zoning of the City of Margate Code of Ordinances, particularly Section 2.2, Article XVI Multiple Dwelling R-3 District (subject property zoning district), Article XXXIII Off-Street Parking and Loading, and the City of Margate Zoning Map.

13. Article XXXIII contains the following Section 33.3. - Amount of off-street parking. (6) Convalescent homes, nursing homes, retirement homes, and other similar institutions for the care of the aged and inform [sic]: One (1) parking space for each five (5) beds for patients *or inmates*, and one (1) parking space for each employee. (7) Uses not specifically mentioned: The requirements for off-street parking for any *residential uses* not specifically mentioned in this section shall be the same as provided in this section for the use most similar to the one sought, it being the intent to require all residential uses to provide off-street parking as described above. All *non-residential uses* shall be required to provide off-street parking, in accordance with an approved Master Parking Plan.

14. In the event that the facility provides 36 client beds, according to the above parking standard, the required number based upon the number of beds would be eight (8) parking spaces. The site plan and staff report indicate that there are 21 parking spaces on the property, with one handicapped space. According to the Code, this limits the amount of employees on the property at any one time to a total of 13. If the number of client beds happen to be less, then there may be more parking for staff, the total number of employees on site at one time could be higher. **This could be part of an approved Master Parking Plan as called for in Article XXXIII.**” (Notice of Appeal, Exhibit 3- Exhibit C – Declaration of C. Wesley Blackman, AICP)

As stated above, Section 33.3 of the Margate Zoning Code provides specific parking requirements for residential uses. If a particular residential use is not listed, the Code requires the most similar residential parking requirement to be applied. Above, Mr. Blackman implies that the use may in fact be nonresidential when he wrote, “This could be part of an approved Master Parking Plan as called for in Article XXXIII.” Only non-residential uses are granted the flexibility to justify the amount of required parking through a Master Parking Plan.

The physical attributes of the subject property and improvements made by the Applicant support the classification of an institutional use rather than a residential use. Through building permit 15-1248, the property owner eliminated a number of access points to the exterior of the structure, hardened and secured exit and entry points, and installed a wrought iron picket fence around the perimeter of the property. Why would a residential use require such a cold and confining structure and operating protocol?

THE 2015 SPECIAL EXCEPTION USE APPROVAL IS NOT RELEVANT

In the Notice of Appeal counsel attempts to vest the non-conforming status of the 2015 approval for a group care facility. The specific type of group care facility that was approved in 2015, and confirmed by the United States District Court for the Southern District of Florida, was an assisted living facility. This use is specifically identified based on the written applications submitted to the City for the group care facility as well as the sworn testimony provided by the Applicant during the January 21, 2015 special exception use hearing. This 2015 approval did not consist of a broad and unilateral approval for any possible group care facility imaginable. It was specific to the representations made for that particular application, and the property was bound to those representations. Since the current request is not for an assisted living facility, it has no connection.

Please see Sections 3.3 and 31.5, 31.6, 31.7, and the definition of nonconforming use provided in Section 2.2 of the Margate Zoning Code, below:

Section 3.3. - Representations in granting of permits.

Any representation made before any city board, any administrative board, or the city commission in the application for a variance, special exception, conditional

use or request for any other permit shall be deemed a condition of the granting of the permit. Should any representation be false or should said representation not be continued as represented, same shall be deemed a violation of the permit and a violation of this section.

Section 31.5. - Change of nonconforming use.

(A) In any residential district, a nonconforming use in a nonconforming building or structure shall be changed only to a conforming use.

(B) In any residential district, a nonconforming use in a nonconforming building or structure shall be changed only to a use permitted in the particular residential district involved, except as provided in paragraph (C) below.

(C) There may be a change of tenancy, ownership or management of a nonconforming use provided there is no change in the nature or character of such nonconforming use except as may be permitted by this zoning code, or amendments thereto.

(D) In a nonresidential district, a nonconforming use in a nonconforming structure may not be replaced, except with a conforming use.

(E) Any change of a nonconforming use of land shall be to a conforming use.

Section 31.6. - Discontinuance or abandonment of a nonconforming use.

(A) If for any reason a nonconforming use of land or portion thereof ceases or is discontinued for a period of more than one hundred eighty (180) days, the land shall not thereafter be used for a nonconforming use, except for agriculture uses.

(B) If for any reason the nonconforming use of a building or structure, or any portion of a building or structure ceases or is discontinued for a period of one hundred eighty (180) days or more, the said building or structure shall not thereafter be used for a nonconforming use.

(C) Any part or portion of a building, structure or land occupied by a nonconforming use, which use is abandoned for one hundred eighty (180) days or more, shall not again be occupied or used for a nonconforming use.

(D) Any part of a building, structure or land occupied by a nonconforming use which is changed to or occupied by a conforming use shall not thereafter be used or occupied by a nonconforming use.

Section 31.7. - Discontinuance or abandonment of variances or waivers.

(A) If for any reason a variance or waiver as to the use of land or any portion thereof does not commence, is not undertaken, ceases, is discontinued, or is abandoned for a period of more one hundred eighty (180) days, the land or portion thereof shall not thereafter be used for said variance or waiver unless specifically outlined unless the contrary is specifically provided in the variance or waiver, or unless same has been considered anew and granted, pursuant to the Code of the City of Margate.

(B) If for any reason a variance or waiver as to the use of a building or structure or any portion thereof does not commence, is not undertaken, ceases, is discontinued, or is abandoned for a period of more one hundred eighty (180) days, the building or structure or any portion thereof shall not thereafter be used for said variance or waiver unless specifically outlined unless the contrary is specifically provided in the variance or unless same has been considered anew and granted, pursuant to the Code of the city.

Section 2.2. – Terms defined.

Nonconforming use: The use of a structure or premises, existing at the effective date of this ordinance, or any amendment thereto, for any purpose not permitted for a new use in the district in which it is located.

The nature and character of the proposed use is starkly different from the (2015) approved use of an assisted living facility. Had the proposed use been of the same nature and character, it would have already been approved by staff years ago without need for a reasonable accommodation or rezoning application. The proposed use has higher staffing levels, generates more traffic, has different and more intense licensing requirements from state agencies, and the proposed use has a higher turnover of clientele than an ALF which makes it more transient in nature.

The reasonable accommodation request submitted on June 8, 2020 indicated that stays at the proposed facility would be as short as 30 days, “It is very important to obtain this contract because it will provide the budget to pay for patients’ treatment in an inpatient facility from 30 to 120 days.” (pg. 5, Reasonable Accommodation Request Form) These differences can substantially and irreparably alter the sensitive nature and character of single-family zoning, which the subject property is now a part of.

Since the certificate of occupancy was released to the Applicant on October 23, 2017, the City has not received a single application for a local business tax receipt (LBTR) to operate an assisted living facility on the subject property. Instead, the property owner has filed seven different applications for uses other than what was approved in 2015. The original approved use as an assisted living facility has clearly been abandoned in favor the different uses sought. The applications filed are as follows:

- 1) March 13, 2017 – Local business tax receipt application for “Medical Assisted Detox.”

- 2) June 17, 2019 – Local business tax receipt application for a residential treatment facility
- 3) May 13, 2020 – Local business tax receipt application for a “Halfway House”
- 4) May 14, 2020 – Local business tax receipt application for a residential treatment center
- 5) June 2, 2020 – Rezoning application for “...Medical rights in a I-2 Building...”
- 6) June 8, 2020 – Reasonable accommodation request for a level 1 residential treatment facility (the subject of this appeal)
- 7) September 4, 2020 – Local business tax receipt for a community residential home, type 2, to be licensed as a residential treatment facility

Applications 1 – 4 and 7 were denied since they did not represent an approved use of the property. Applications 5 and 6 are still pending. Important to note is that application 5 is for a rezoning which would amount to a fundamental and material change of the uses permitted at the property.

Moreover, in May 2020 it was judicially determined with finality that all that was approved in January 2015 was an ALF residential use. Since the Applicant and counsel have stated on numerous occasions that they are no longer pursuing the lawsuit or any further appeals, that determination is now final. Thus, Staff looks again at the actions of the property owner who has filed seven different applications for uses other than what was approved. Not once was a single application filed for an assisted living facility submitted to the City after construction at the subject property was completed in 2017. These indisputable facts provide a clear indication that the nonconforming use has never been operated and has been abandoned.

CONCLUSION

For all of the above reasoning, Staff recommends denial of the appeal. The City Manager, based on the evidence presented to him appropriately denied the reasonable accommodation request in that it was neither reasonable nor necessary and that it represented a request for a fundamental alteration of the City’s zoning scheme, and would be inconsistent with the nature and character of the residential neighborhood.

EXHIBIT A

Florida Department of State

DIVISION OF CORPORATIONS



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Fictitious Name Search

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Fictitious Name Detail

Fictitious Name

MARGATE CARE FOR HEROES

Filing Information

Registration Number G20000085513

Status ACTIVE

Filed Date 07/20/2020

Expiration Date 12/31/2025

Current Owners 1

County MULTIPLE

Total Pages 1

Events Filed NONE

FEI/EIN Number NONE

Mailing Address

5379 LYONS RD 154
COCONUT CREEK, FL 33073

Owner Information

QUALITY OF LIFE, CORP
603 MELALEUCA DRIVE H
MARGATE, FL 33063

FEI/EIN Number: 47-3216034

Document Number: P15000017783

Document Images

[07/20/2020 -- Fictitious Name Filing](#) [View image in PDF format](#)

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Detail by Entity Name

Florida Profit Corporation
QUALITY OF LIFE, CORP

Filing Information

Document Number P15000017783
FEI/EIN Number 47-3216034
Date Filed 02/23/2015
Effective Date 02/23/2015
State FL
Status ACTIVE

Principal Address

603 MELALEUCA DRIVE H
MARGATE, FL 33063

Changed: 03/27/2016

Mailing Address

5379 Lyons Rd 154
Coconut Creek, FL 33073

Changed: 04/02/2019

Registered Agent Name & Address

JIMENEZ, MIRYAM
5379 LYONS RD
154
COCONUT CREEK, FL 33073

Officer/Director Detail

Name & Address

Title P

JIMENEZ, MIRYAM
5379 LYONS RD
COCONUT CREEK, FL 33073

Annual Reports

Report Year	Filed Date
2018	03/26/2018
2019	04/02/2019

2020

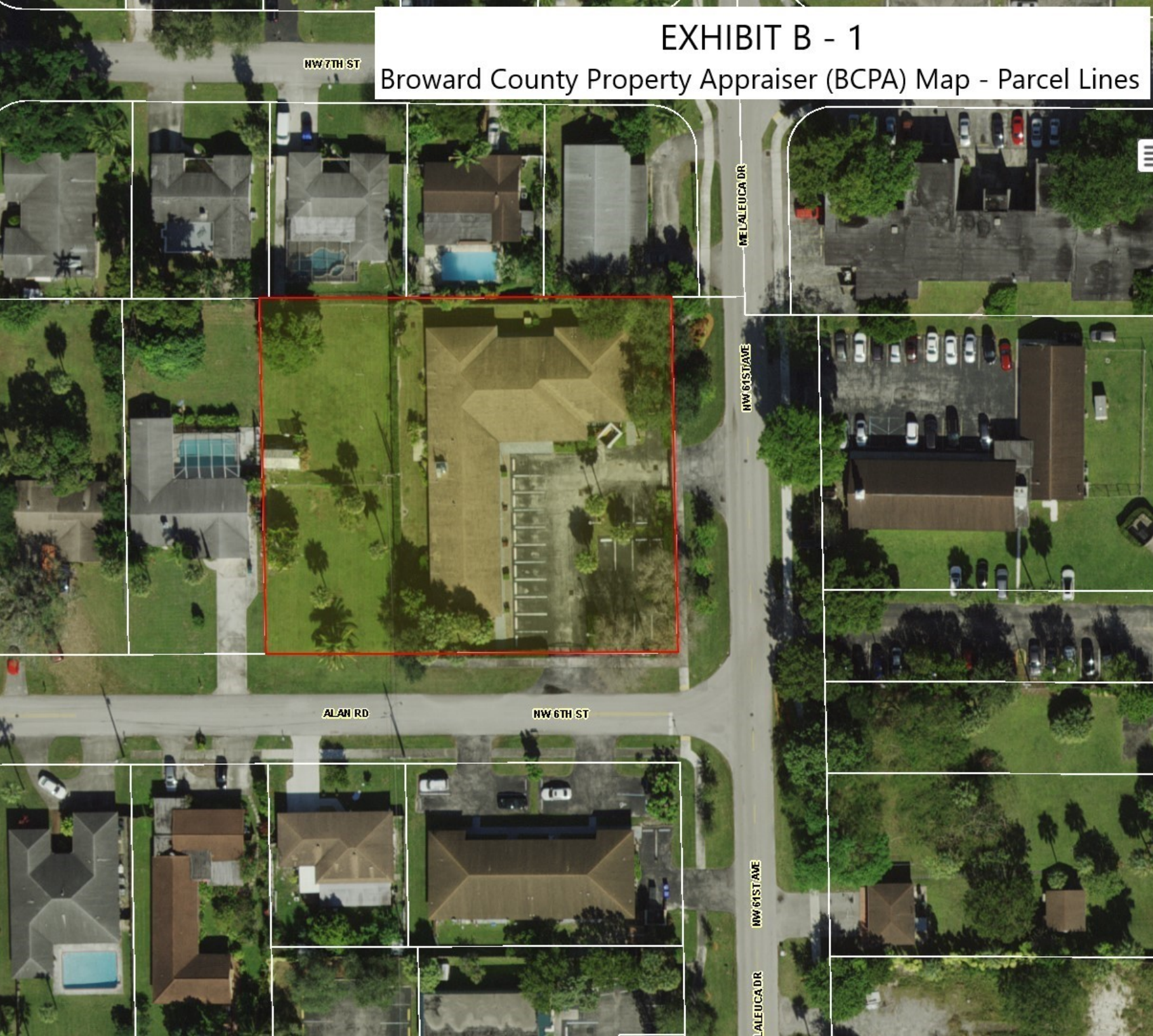
03/18/2020

Document Images

03/18/2020 -- ANNUAL REPORT	View image in PDF format
04/02/2019 -- ANNUAL REPORT	View image in PDF format
03/26/2018 -- ANNUAL REPORT	View image in PDF format
04/21/2017 -- ANNUAL REPORT	View image in PDF format
03/27/2016 -- ANNUAL REPORT	View image in PDF format
02/23/2015 -- Domestic Profit	View image in PDF format

EXHIBIT B - 1

Broward County Property Appraiser (BCPA) Map - Parcel Lines



Parcel Info

Folio Number: [484136020](#)

Owner: MMJ FINAN

Situs Address: 603 MELALEUCA DR
FL 33063

Legal: HAMMON
B LOTS 1 & 2
IN BLK 3

Millage Code: 1212

Use Code: 73

Land Value: \$ 305,730

Building Value: \$ 984,140

Other Value: 0

Total Value: \$ 1,289,870

SOH Capped Value: \$ 905,220

Homestead Exempt Amt: \$ 0

WVD Exempt Amt: \$ 0

Other Exempt Amt: \$ 0

Taxable Value: \$ 905,220

Sale Date 1: 09/25/2019

Sale Price 1: \$ 100

Deed Type 1: QCD

Sale Date 2: 06/06/2018

Sale Price 2: \$ 100

Deed Type 2: WD

Adj Bldg S.F.: 8885

Neighborhood:

Land Tag: 58

Price	Factor
7.00	43,675.00

EXHIBIT B - 2
BCPA Map - Parcel Lines and Zoning Boundaries



Parcel Information

Folio Number: [484136020350](#)

Owner: MMJ FINANCIAL SERVICES INC

Situs Address: 603 MELALEUCA DR MARGATE FL 33063

Legal: HAMMON HEIGHTS SEC 2 34-46 B LOTS 1 & 2, TOG/W LOT 3, ALL IN BLK 3

Millage Code: 1212

Use Code: 73

Land Value: \$ 305,730

Building Value: \$ 984,140

Other Value: 0

Total Value: \$ 1,289,870

SOH Capped Value: \$ 905,220

Homestead Exempt. Amt: \$ 0

WVD Exempt. Amt: \$ 0

Other Exempt. Amt: \$ 0

Taxable Value: \$ 905,220

Sale Date 1: 09/25/2019

Sale Price 1: \$ 100

Deed Type 1: QCD

Sale Date 2: 06/06/2018

Sale Price 2: \$ 100

Deed Type 2: WD

Adj Bldg S.F.: 8885

Neighborhood:

Land Tag: 58

Price	Factor	Type
7.00	43,675.00	SF

Price	Factor	Type
7.00	43,675.00	SF



Find address or place



6180

6111

6109

6103

695

Lot 3

R-1

6181

6111

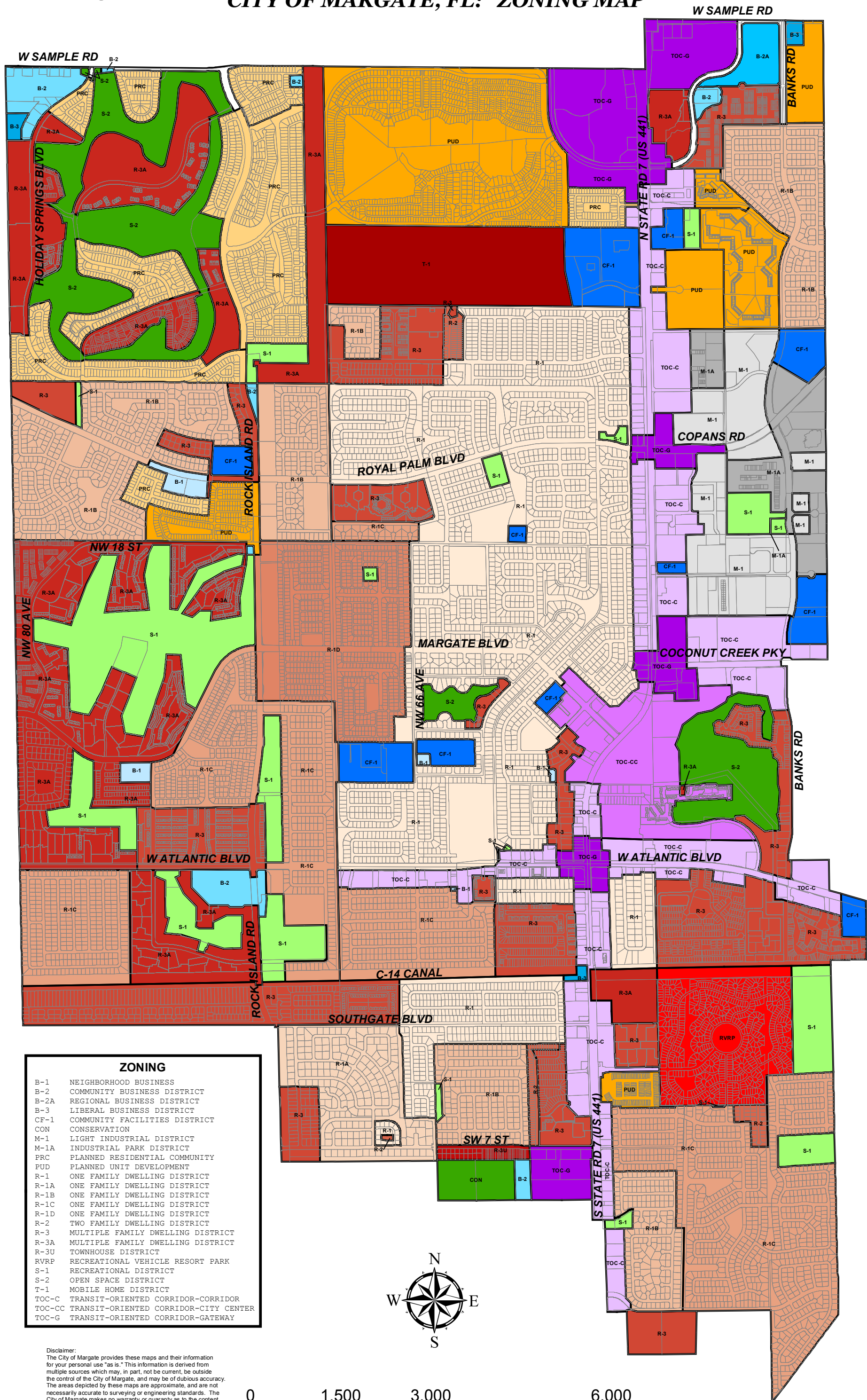
Lots 1 & 2

NW 61 AVE

R-3

EXHIBIT C - 1

CITY OF MARGATE, FL: ZONING MAP



ZONING

B-1	NEIGHBORHOOD BUSINESS
B-2	COMMUNITY BUSINESS DISTRICT
B-2A	REGIONAL BUSINESS DISTRICT
B-3	LIBERAL BUSINESS DISTRICT
CF-1	COMMUNITY FACILITIES DISTRICT
CON	CONSERVATION
M-1	LIGHT INDUSTRIAL DISTRICT
M-1A	INDUSTRIAL PARK DISTRICT
PRC	PLANNED RESIDENTIAL COMMUNITY
PUD	PLANNED UNIT DEVELOPMENT
R-1	ONE FAMILY DWELLING DISTRICT
R-1A	ONE FAMILY DWELLING DISTRICT
R-1B	ONE FAMILY DWELLING DISTRICT
R-1C	ONE FAMILY DWELLING DISTRICT
R-1D	ONE FAMILY DWELLING DISTRICT
R-2	TWO FAMILY DWELLING DISTRICT
R-3	MULTIPLE FAMILY DWELLING DISTRICT
R-3A	MULTIPLE FAMILY DWELLING DISTRICT
R-3U	TOWNHOUSE DISTRICT
RVRP	RECREATIONAL VEHICLE RESORT PARK
S-1	RECREATIONAL DISTRICT
S-2	OPEN SPACE DISTRICT
T-1	MOBILE HOME DISTRICT
TOC-C	TRANSIT-ORIENTED CORRIDOR-CORRIDOR
TOC-CC	TRANSIT-ORIENTED CORRIDOR-CITY CENTER
TOC-G	TRANSIT-ORIENTED CORRIDOR-GATEWAY



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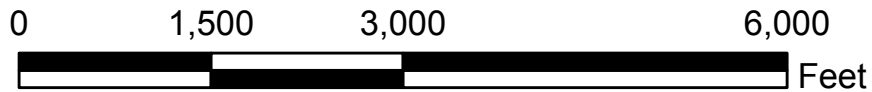
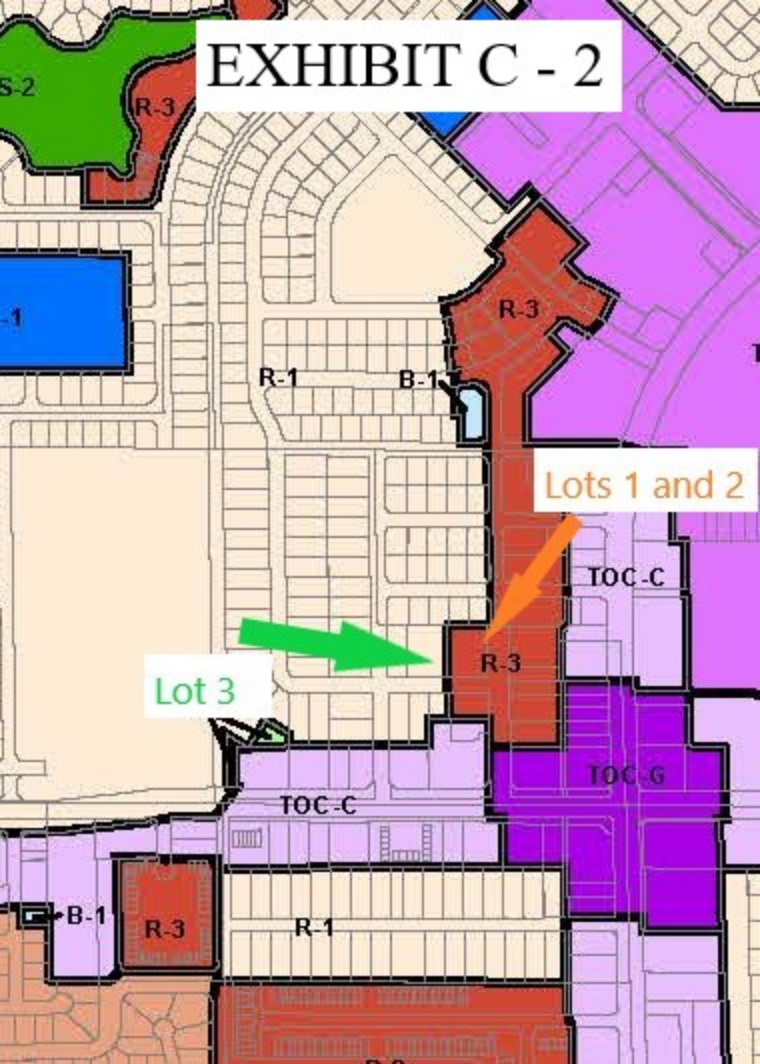


EXHIBIT C - 2



Lot 3

Lots 1 and 2

S-2

R-3

-1

R-1

B-1

R-3

R-3

TOC-C

TOC-C

TOC-G

B-1

R-3

R-1