



## INTEROFFICE MEMORANDUM FROM THE DEVELOPMENT SERVICES DEPARTMENT

DATE: October 13, 2020

TO: Kyle Teal, Agent

FROM: Elizabeth Taschereau, Director of Development Services

SUBJECT: DRC Agenda Item # 2020-338

**DRC 2020-338:** CONSIDERATION OF A REZONING FROM A ONE-FAMILY DWELLING (R-1) DISTRICT AND MULTIPLE DWELLING (R-3) DISTRICT TO COMMUNITY FACILITY (CF-1) ZONING DISTRICT

**LOCATION:** 603 MELALEUCA DRIVE, MARGATE, FL 33063

**ZONING:** MULTIPLE DWELLING (R-3) DISTRICT

**LEGAL DESCRIPTION:** LOTS 1, 2 AND 3, BLOCK 3, HAMMON HEIGHTS SECTION 2, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 34, PAGE 46, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

**PETITIONER:** ATTORNEY KYLE TEAL, AGENT FOR MARGATE CARE FOR HERO'S, LLC

☐ Approved

☐ Approved subject to conditions and safeguards

☒ Denied

☐ Other: \_\_\_\_\_

| DEPARTMENT   | SIGNATURE OF APPROVAL     | DATE       |
|--------------|---------------------------|------------|
| Building     | <i>Richard Thompson</i>   | 10/15/2020 |
| CRA          |                           |            |
| Engineering  | <i>Chris Thompson</i>     | 10/14/20   |
| Fire         | <i>Mark</i>               | 10/15/20   |
| Planning     | <i>Mark</i>               | 10/14/2020 |
| Police       | <i>Michael McLaughlin</i> | 10/15/2020 |
| Public Works |                           |            |
| Utilities    | <i>Pedro</i>              | 10/15/20   |

  
Elizabeth Taschereau, Director

10.15.2020  
Date



## CITY OF MARGATE

### DEVELOPMENT REVIEW COMMITTEE (DRC) REVIEW #1

***October 13, 2020***

|                           |   |  |                  |
|---------------------------|---|--|------------------|
| <b>PROJECT NAME:</b>      |   | Margate Care for Heroes, LLC   |                  |
| <b>PROJECT NUMBER:</b>    |   | 2020-338   |                  |
| <b>LOCATION:</b>          |   | 603 Melaleuca Drive  |                  |
| <b>APPLICANT/AGENT:</b>   |   | Kyle Teal, Esq., agent for Miryam Jimenez, MMJ Financial Services, Inc.  |                  |
| <b>REVIEW/APPLICATION</b> |   | Rezoning   |                  |
| <b>DISCIPLINE</b>         | <b>REVIEWER</b>                         | <b>EMAIL</b>   | <b>TELEPHONE</b> |
| DRC Chairman              | Elizabeth Taschereau – Director         | <a href="mailto:etaschereau@margatefl.com">etaschereau@margatefl.com</a> | (954) 884-3686   |
| Planning                  | Andrew Pinney – Senior Planner          | <a href="mailto:apinney@margatefl.com">apinney@margatefl.com</a>         | (954) 884-3684   |
| Planning                  | Alexia Howald – Associate Planner       | <a href="mailto:ahowald@margatefl.com">ahowald@margatefl.com</a>         | (954) 884-3685   |
| Building                  | Richard Nixon – Building Official       | <a href="mailto:rnixon@margatefl.com">rnixon@margatefl.com</a>           | (954) 970-3004   |
| Engineering               | Pedro Stiassni – Engineer               | <a href="mailto:pstiassni@margatefl.com">pstiassni@margatefl.com</a>     | (954) 884-3635   |
| Fire                      | David Scholl – Fire Department          | <a href="mailto:dscholl@margatefl.com">dscholl@margatefl.com</a>         | (954) 971-7010   |
| Public Works              | Mark Collins – Director                 | <a href="mailto:mcollins@margatefl.com">mcollins@margatefl.com</a>       | (954) 972-8126   |
| CRA                       | Vacant                                  |  |                  |
| Police                    | Lt. Ashley McCarthy – Police Department | <a href="mailto:amccarthy@margatefl.com">amccarthy@margatefl.com</a>     | (954) 972-1232   |

**Below, please find written comments for the above referenced DRC application.**

## DEPARTMENTAL COMMENTS

### BUILDING

1. With respect to the rezoning I have no comments. However, while the space was built to the I2 standards of 2015 the building was not approved for that use by Zoning. If the applicant intends to now occupy and operate the business as an I2 occupancy they will need to comply with the code in effect at the time of submittal. Additionally, outside agencies approvals will also be required.

### FIRE

1. With the zoning proposed the building (if not already installed) will require a fire alarm, fire sprinkler and standby generator.

The Director of the Department of Environmental and Engineering Services, or his qualified designee, has conducted a review of the submitted documentation in accordance with 31-35(2), 31-37, and other relevant sections of the City's Code of Ordinances and finds the following:

**A. AVAILABILITY OF POTABLE WATER**

Potable water service is available to serve the needs of the proposed development. The water treatment plant has sufficient available capacity to satisfy the potable water needs of the proposed development as well as those of other developments in the service area which are occupied; available for occupancy; hold active, valid building permits; or have already reserved capacity. Please note that this determination shall not be construed as a reservation of capacity for the development unless a developer's agreement has been executed with the City specifically reserving water treatment capacity.

**B. AVAILABILITY OF WASTEWATER TREATMENT AND DISPOSAL SERVICES**

Wastewater treatment and disposal service is available to serve the needs of the proposed development. The wastewater treatment plant has sufficient available capacity to satisfy the wastewater treatment and disposal needs of the proposed development as well as those of other developments in the service area which are occupied; available for occupancy; hold active, valid building permits; or have already reserved capacity.

Please note that this determination shall not be construed as a reservation of capacity for the development unless a developer's agreement has been executed with the City specifically reserving wastewater treatment and disposal capacity.

**C. TRAFFIC IMPACTS**

For the reasons outlined below, we could not conclusively determine whether or not the traffic generated by the proposed development will be safely and efficiently handled by the regional transportation network and local streets.

1. In accordance with Sec. 31-37(a) of the Code, a proposed development shall be presumed to have the maximum impact permitted under applicable land development regulations.
2. Note that paragraph 31-317(b) requires a site plan to be presented when a rezoning application is submitted, and no site plan was included with the application, so this section is not applicable for this review.
3. The independent variables chosen by the traffic consultant appear to be the variables that would appear to generate the MINIMUM impact from the development, rather than the MAXIMUM impact. To assess MAXIMUM IMPACT, as required by Code, the study may need to be re-

worked with an independent variable of “Residents” for in the existing condition (The American Community Survey of 2018 shows Margate with an average of 2.56 residents per dwelling unit) and an independent variable of “Employees” for the proposed condition.

4. The study shows a difference between the daily trips “in” versus the daily trips “out”. If these two quantities are not equal, that would indicate that, on average, the site is gaining or losing cars each day, which is an unlikely condition.
5. Provide a parking study, or at least a discussion of the parking requirements, as they relate to the maximum number of employees, residents, outside vendors, and visitors who will be on site at any given time, to demonstrate sufficient parking is provided.
6. In accordance with 31-35(2)c of Margate’s Code of Ordinances and 61G15-23.001(1) and (3) F.A.C., the traffic statement shall be signed and sealed by a licensed Professional Engineer who shall have been in responsible charge of the preparation and production of the document and who has expertise in traffic engineering.

#### **D. SURFACE WATER MANAGEMENT**

Analysis and assessment of the surface water impacts could not be performed, as no plan, model, or study of the site in the maximum impact condition was provided.

#### **E. STREETS, SIDEWALKS, PUBLIC PLACES**

The public sidewalk abutting the south property line of the parcel must be extended to the western limits of the site.

Other streets, sidewalks, and public places appear to be “existing to remain”. They appear to be in good condition and do not appear to be in distress. To the best of our knowledge and understanding, these public improvements were previously constructed under permits from the City. Accordingly, they are deemed to meet the minimum standards set forth in Chapters 31 and 35 of this Code.

#### **F. WATER DISTRIBUTION SYSTEM**

To the best of our knowledge and understanding, the water distribution system meets or exceeds the minimum standards and requirements of the following:

1. Chapter 39 of the City’s Code of Ordinances
2. AWWA Standards
3. Broward County Environmental Protection and Growth Management Division

Connection charges and/or impact fees will be determined once the number of beds can be established for the maximum impact condition.

## **G. WASTEWATER COLLECTION AND TRANSMISSION SYSTEM**

To the best of our knowledge and understanding, the wastewater collection and transmission system meets or exceeds the minimum standards and requirements of the following:

1. Chapter 39 of the City's Code of Ordinances
2. AWWA Standards
3. Broward County Environmental Protection and Growth Management Division

## **H. GENERAL**

1. Provide an accessible route from the public right-of-way to the front door.
2. Provide at least 1 h/c accessible parking space for every 25 parking spaces or fraction thereof. The accessible space shall have an accessible aisle in accordance with the requirements of the FBC, Accessibility.
3. Accurately show on your survey the location and routing of the public sidewalk at the north end of the east property line, where the sidewalk jogs to the east. This is not accurately shown on the survey, and may impact the connection of the interior sidewalk to the public sidewalk.
4. Please provide a response letter identifying how and where (what document, page, etc.) you have addressed each comment.

## DEVELOPMENT SERVICES

1. This application is for a rezoning and is therefore subject to the requirements of Chapter 31 of the Code of the City of Margate.

### **Sec. 31-35. - Determinations required prior to approval of a development permit.**

A determination that adequate services will be available to serve the needs of the proposed development shall be made when the following conditions are met:

(1) *Director of development services.* The director of development services determines:

- a. That the proposed development is consistent with the Margate Comprehensive Plan.
- b. That the proposed development is in conformity with the Margate Zoning Code.
- c. In the case of site plans, that the proposed development is in conformity with the provisions of chapter 23 of this Code.

### **Sec. 31-36. - Determinations required prior to a change in zoning.**

(a) *Unplatted land.* A change in zoning on unplatted land shall be made with the express condition that upon platting of the property, the plat shall be subject to development review procedures outlined in this article and that the city, at the time of the rezoning, makes no explicit or implied guarantees that services or facilities are available to serve the proposed development at the time of rezoning.

(b) *Platted land:*

(1) A change in zoning on any platted land which according to Section 2.08 of the Margate Land Use Plan, or Section 3.11 of the zoning code must be replatted or resurveyed prior to issuance of a building permit may be approved in the same manner as a change in zoning on unplatted land.

(2) A change in zoning on platted land which need not be replatted prior to issuance of a building permit shall be permitted after a determination has been made by the city commission that services are available to serve the development permitted in the zoning district which is being petitioned. A determination that services are available shall be made when the city commission approves a report submitted by the development review committee which indicates the conditions contained in [section 31-35](#) of this article have been met.

### **Sec. 31-37. - Development presumed to have maximum impact permitted; use of site plan to assess maximum impact.**

(a) For the purpose of implementing sections [31-34](#), [31-35](#), and [31-36](#), a proposed development shall be presumed to have the maximum impact permitted under applicable land development regulations such as zoning regulations and the land use element of the Margate Comprehensive Plan.

(b) If a site plan is presented when a proposed plat, subdivision resurvey or rezoning application is submitted, it *may* be used as the basis to assess the maximum impact of the development. In the event that an application for a building permit is submitted which, in the opinion of the building official, provides more intensive uses than those indicated on the site plan or substantially deviates from the approved site plan, the application shall be referred to the development review committee for assessment.

Based on the above three Code sections, Development Services staff must compare the application to the adequacy determinations described in Section 31-35 of the Code of the City of Margate under the presumption that the proposed rezoning will have maximum impact under the applicable land development regulations and the land use element of the Margate Comprehensive Plan.

#### Subject Property:

The subject property is a 43,675 square foot (~1-acre) site located at 603 Melaleuca Drive. The property is generally located at the northwest corner of Melaleuca Drive (AKA NW 61<sup>st</sup> Avenue) and Alan Road (AKA NW 6<sup>th</sup> Street). The subject property has 194 feet of frontage on Melaleuca Drive and 225 feet of frontage on Alan Road. As this is a corner plot, the front plot would be considered the plot line along Melaleuca Drive as it is the shorter of the two street frontages. This interpretation is consistent with the definition of “plot line, front” that is provided in Section 2.2 of the Margate Zoning Code.

The subject property is currently comprised of Lots 1, 2, and 3, of Block 3, of the HAMMON HEIGHTS SECTION 2 plat (34-46). Lots 1 and 2 are within the R-3 zoning district, and Lot 3 is within the R-1 zoning district. The subject property is located within the TOC Transit Oriented Corridor land use category. The principal structure is an L-shaped building that is 8,885 square feet in area. The subject property was originally developed as a 10-unit multi-family structure on Lots 1 and 2. Lot 3 was acquired by the property owner in September of 2019. The building is situated close to the north property line, with the broad side of the “L” facing the west property line. The site provides vehicular access from both Alan Road and Melaleuca Drive.

#### Nature of CF-1 District

Section 2.2 of the Margate Zoning Code defines ‘residentially zoned property’ as “Any land or water area that has a zoning district classification of R-1, R-1A, R-1B, R-1C, R-1D, R-2, R-3, R-3A, R-3U, PRC, PUD RVRP, or T-1.” The requested zoning district is not considered residential under the terms of the Margate Zoning Code.

Section 23-2 defines ‘nonresidential property’ as, “all land that is used for commercial, industrial, and/or community facility uses, and does not permit persons to reside on said land.” This definition specifically identifies “community facility uses.” The CF-1 district provides for a plethora of community facility uses, not all of which permit persons to reside on said land. Under the direction of Section 31-37, staff must presume that the rezoning will have maximum impact, and therefore, the CF-1 zoning district shall be considered nonresidential for this analysis.



## **I. CONFORMITY WITH CODE**

### **A. CF-1 Zoning Requirements:**

2. In 2014, the property owner filed an application for a special exception use as a group care facility. The specific type of group care facility was represented as an “independent living facility” (ILF) on written application forms for the special exception, and was also represented as an assisted living facility (ALF) under sworn testimony provided to the City Commission during the special exception use public hearing. Shortly after receiving approval for an ILF/ALF, property owner posted a sign on the subject property which read, “COMING SOON MARGATE DETOX.” During permitting, property owner submitted a sworn affidavit, which in part read, “I will not operate a detoxification facility from the Property without the prior approval of the City of Margate, Florida.” After the physical modifications to the building were complete, property owner filed a federal lawsuit in an attempt to force the City to allow a detoxification facility at the subject property. Property owner built a facility to the I-2 occupancy group standards under false pretenses during 2014-2017 and now intends to rezone the property for more intensive uses of the property. This is confirmed in an email sent to Andrew Pinney (Margate staff) on June 5, 2020 when counsel for the applicant wrote:

“As you know, we are not seeking a building permit because there is no new development necessary for this change of zoning. Nothing in the structure or outside of the structure is being altered. The City already approved the construction for the building as it exists today. The building is ready to serve as a care facility in its current form. The rezoning is sought to bring the property’s zoning up-to-date with its current physical configuration.”

Staff finds this method of development inconsistent with the purpose of the CF-1 district, as it does not represent an orderly pattern of development.

#### **Section 11.2. - Purpose of district.**

The community facility district is intended to provide for the orderly development of those educational, cultural, religious, health care, recreational, and governmental facilities required to meet the needs of the community in which they are located.

3. The subject property presently provides a front yard setback of 25.14 feet, Section 11.6 of the Margate Zoning Code requires 35 feet. The front setback is not in conformity with the Margate Zoning Code.

4. The subject property is contiguous to residentially zoned property along its (north) side property line. The subject property presently provides a setback of 14.59 feet from residentially zoned property to the north, Section 11.6 of the Margate Zoning Code requires this setback to be at least 40 feet. The side setback from residentially zoned property is not in conformity with the Margate Zoning Code.

5. The subject property is contiguous to residentially zoned property along its rear (west) property line. The subject property presently contains a freestanding storage building which provides a setback of approximately 2 ½ feet from residentially zoned property to the west, Section 11.6

requires this setback to be 40 feet. The rear setback from residentially zoned property is not in conformity with the Margate Zoning Code.

**Section 11.6. - Setbacks.**

- (a) There shall be a front yard of not less than thirty-five (35) feet.
- (b) There shall be side yards of not less than twenty-five (25) feet.
- (c) There shall be a rear yard of not less than twenty-five (25) feet.
- (d) There shall be a corner-side setback of twenty-five (25) feet except where a greater setback is required under another provision of this Code.
- (e) Side and rear setbacks shall be increased by five (5) feet for each story above the second story.
- (f) No building or roofed structure shall be located within forty (40) feet of any residentially zoned property, nor shall any parking areas be located within twenty (20) feet of any residentially zoned property.

**B. Off-street Parking Requirements**

6. Based on the requirements of Section 33.3 of the Margate Zoning Code, the facility described in the attached justification statement and business plan having 36 patient beds and 49 employees requires 57 parking spaces. The subject property provides 22 parking spaces. The subject property is deficient of required parking by 35 spaces, or 159%.

**Off-street Parking Requirements:**

**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.

7. The subject property has two vehicle gates which do not provide the required 3 vehicle reservoir spaces to allow for adequate vehicle stacking, and therefore do not conform to the requirements of Section 33.11 of the Margate Zoning Code. Important to note, the Board of Adjustment granted variance BA-12-2015 on April 7, 2015 which allowed the property owner to install vehicle gates without the required vehicle reservoir areas.

**Section 33.11. - Vehicular reservoir areas for drive-through facilities.**

(A) All facilities which render goods and/or services directly to patrons within vehicles shall be required to provide reservoir areas for inbound vehicles. The purpose of these areas is to ensure that the vehicles using the facility do not interfere with the flow of vehicular and pedestrian traffic within public rights-of-way, nor interfere with parking circulation or loading within the facility.

(B) Each reservoir area required pursuant to this article shall be a minimum of ten (10) feet wide by twenty (20) feet long and each reservoir area shall not block parking stalls, parking aisles, driveways or pedestrian ways. For the purposes of this section, the space occupied by the vehicle being served by the facility is considered one (1) reservoir area.

(C) The number of reservoir areas required shall be provided and maintained on the basis of the following minimum requirements:

| Number of Vehicle Reservoir Areas  |   |
|--|---|
| Automatic car wash, spaces per service lane                                    | 4 |
| Child care center, day nursery, nursery school, spaces at drop-off point       | 3 |
| Drive-through beverage or food sales, spaces per service lane                  | 4 |
| Drive-in bank, savings and loan, spaces per service lane                       | 4 |
| Dry cleaning pickup station, spaces per service lane                           | 2 |
| Filling station, spaces per side, each island                                  | 3 |
| Gatehouse or ticket booth, spaces inbound and outbound                         | 3 |
| Package stores, spaces per service lane  | 2 |
| Pharmacies with drive-through prescription facilities, spaces per service lane | 3 |
| Photograph developing, spaces per service lane                                 | 2 |
| Self-service car wash, spaces per wash stall                                   | 2 |

|   |   |
|---|---|
| Skating rink, bowling alley, spaces at drop-off point | 3 |
| Valet parking, spaces at drop-off point               | 3 |

### C. Required Improvements to Public Right-Of-Way

8. The portion of the subject property consisting of Lot 3 does not provide a public sidewalk on the Alan Road right-of-way, and therefore does not conform to Sections 32.2, 32.3, and 32.4 of the Margate Zoning Code.

#### Required Improvements on Adjacent Public Right-Of-Way:

##### **Section 32.2. - Right-of-way use.**

(A) All street rights-of-way shall contain sidewalks, parkways, paved street with curb and gutters, sanitary sewers, underground storm drains, water mains, fire hydrants, street lights and/or any other necessary utilities.

(B) All utility service stubs must be installed and extended not less than one (1) foot beyond the right-of-way side lines prior to street paving.

##### **Section 32.3. - Street paving [standards; improvements performance bonds; permits required.]**

(C) *Performance bonds.* It shall be necessary for any person, developer, owner or owners to furnish to the City of Margate a good and sufficient performance bond for all of the required street pavement, sidewalks and drainage facilities to be constructed within dedicated or proposed rights-of-way. Said bond shall also secure proper installation of water and sewer lines in accordance with approved specifications and plans. The required performance bond shall be calculated at one hundred twenty-five (125) per cent of the construction costs of the above-required facilities.

Said bond shall be furnished by a surety company of recognized standing, authorized to do business in the State of Florida and having a resident agent in Broward County. Provided, however, that the subdivider, owner or owners may, at his or their option, furnish cash or government bond security in the same amount. The subdivider may also submit an irrevocable letter of credit to the city in place of the preceding forms of security. All irrevocable letters of credit shall be such as are acceptable at a reasonable prudent lending institution and shall be acceptable only with the approval of either the city manager or his designee.

All improvements shall be completed within a period not to exceed eighteen (18) months. However, the city may extend the time of completion based upon a showing of good cause.

The subdivider, owner or owners shall be responsible for the paving and other improvements mentioned above until said work is accepted by the city and the bond released.

Minimum standards and permits for the excavation and construction of all canals, ditches and swales as provided for herein shall be adopted by separate ordinance, which separate ordinance shall be construed in conjunction with this section.

The performance bond required hereby shall not be released until, in addition to compliance with all of the requirements of the subdivision and platting regulations and ordinances of the city, all street lights and street markers are in place within the subdivision.

#### **Section 32.4. - Sidewalks.**

All sidewalks shall be constructed of two thousand five hundred (2,500) psi concrete not less than five (5) feet in width for public dedicated rights-of-way and four (4) feet for private rights-of-way, or as specified in each TOC district, and having a thickness of not less than four (4) inches, provided, however, that all sidewalks crossing a vehicular driveway shall have a thickness of not less than six (6) inches.

(1) *Location.* All sidewalks shall be parallel to and extend not less than five (5) feet from the street right-of-way side line into the street right-of-way and parallel to street curbing and pavement.

(2) *Rough grading.*

(a) *Clearing.* Scarify the area where vegetation occurs to a minimum depth of six (6) inches until all vegetation and other unsuitable materials are loosened and removed from the site.

(b) *Grade.* To proper elevation for specified minimum thickness of all sidewalks.

(c) *Additional fill.* If required shall be clean foundation sand mechanically compacted to achieve a solid grade.

#### **D. Landscaping Requirements**

9. The subject property does not provide the required right-of-way buffer on Lot 3, along Alan Road, as required in Section 23-6 of the Code of the City of Margate. On lots 1 and 2, this buffer ranges from 4 feet to 6 feet wide around the parking area along both Melaleuca Drive and Alan Road, which does not meet the minimum required width of 10 feet. This buffer is an essential compatibility measure applied by the Code in order to enhance views from the public right-of-way and alleviate the impacts of incompatible uses. The subject property does not conform to the landscape buffer requirements of Section 23-6 of the Code of the City of Margate.

#### **Sec. 23-1. - Objectives.**

The objectives of these regulations are to beautify the city, and improve the quality of life for its citizens by requiring Florida friendly landscaping that will conserve water, soften the hardscape of modern development, provide tree canopy, natural

habitat, and shade areas. These objectives further include the maintenance of high quality air and water resources the provision of buffer areas between and among various land uses, the preservation of residential property values, the revitalization of existing commercial areas, and the preservation of indigenous vegetation.

**Sec. 23-6. - Driveway limitations, landscaping abutting right-of-way, visual clearance.**

(B) *Required landscaping abutting rights-of-way.* On the site of a building or vehicular use area directly fronting on a public right-of-way, with the exception of single-family detached dwellings and duplex detached dwellings, there shall be landscaping provided between the site and the right-of-way as follows:

(1) In non-residential districts and multi-family residential districts, a strip of land at least ten (10) feet in width, adjacent to and parallel with the right-of-way, shall be landscaped. Within said strip there shall be planted at least one (1) shade tree for every forty (40) lineal feet of frontage or portion thereof. In addition, a hedge shall be planted within the landscape strip and parallel with the street. All hedges must be planted a minimum of two (2) feet back from any public sidewalk. The remaining area of this strip shall be covered with ground covers and turf. Ground covers shall cover at least fifty (50) per cent of the landscaping strip not occupied by trees and shrubs.

10. The subject property was developed without the required buffer wall and landscaping along the north and west property lines. This buffer is required by Section 23-11 of the Code of the City of Margate. This buffer is an essential compatibility measure applied in order to alleviate the impacts of incompatible uses and protect sensitive land uses. The lack of adequate buffers plays a key role in determining compatibility of the CF-1 district in this particular area of the City, adjacent to these particular uses and districts. The subject property does not conform to the buffer requirements of Section 23-11 of the Code of the City of Margate.

**Sec. 23-11. - Minimum landscape requirements for zoning districts.**

(C) Nonresidential districts.

(1) In cases of commercial, mixed use, or industrial development or redevelopment, on that portion of the site which is directly abutting residentially zoned or designated property, the nonresidential property owner shall create a buffer zone along the common property line in order to screen light, noise, traffic and trash from the residential parcel.

(2) The nonresidential site shall create a fifteen-foot wide unpaved strip along the common property line. This buffer strip shall provide a six-foot high unpierced decorative masonry wall, constructed in conformance to applicable building codes and stuccoed and painted on both sides and maintained in good condition. Said wall shall be located wholly on the nonresidential site adjacent to the common property line and running its full length. Walls within the same subdivision shall conform to a uniform appearance. One (1) category 1 non-deciduous tree shall be planted for

every twenty-five (25) lineal feet of the strip. Trees shall be planted in a staggered pattern, but in no instance shall a tree be permitted to be planted within five (5) feet of the required wall or a paved area.

(3) Where a structure within a nonresidentially zoned property has been permitted without a buffer adjacent to residentially zoned property under unified control, prior to development permits being issued on the residential property, it shall be the responsibility of the residential property owner to comply with the following conditions:

a. The residential site shall provide a six-foot high unpierced decorative masonry wall, constructed in conformance to applicable building codes and stuccoed and painted on both sides and maintained in good condition. Such wall shall be located wholly on the residential site adjacent to the common property line and running its full length. Walls within the same subdivision shall conform to a uniform appearance. The residential site shall create a 15-foot wide landscape strip adjacent to the wall within the residential side. One (1) category 1 non-deciduous tree shall be planted for every twenty-five (25) lineal feet of the common property line. Trees shall be planted in a staggered pattern, but in no instance shall a tree be permitted to be planted within five (5) feet of the required wall or a paved area.

b. This section shall not apply to the installation of additions/alterations to previously permitted residential property.

#### E. Fence Regulations

11. The subject property has a wrought iron fence erected along its front and street side property lines, a wood fence along the north property line and a chain link fence along the west property line. The wrought iron fence placement does not conform to Section 3.14 of the Margate Zoning Code because it was installed in the front yard. Important to note, the Board of Adjustment granted variance BA-13-2015 on April 7, 2015 which allowed a fence to be installed in the front yard. The wood fence along the north property line and the chain link fence along the west property line do not conform to the material requirements of Section 3.14 of the Margate zoning Code because where nonresidential property abuts residential property only decorative masonry walls are permitted on the nonresidential property.

#### **Section 3.14. - Construction of fences, walls and/or hedges.**

(16) In commercial, mixed use, and industrial districts, no fence or wall shall be erected or maintained in any front yard, except when used on a temporary basis to secure an active construction site. Otherwise, fences and walls may be erected to a height not exceeding seven (7) feet above the established grade. Where nonresidential property directly abuts a residential parcel, only decorative masonry walls shall be permitted on the nonresidential parcel along the common property line. Chain link or other similar style fences shall not be permitted within any TOC

zoning district, except when used on a temporary basis to secure an active construction site. No fence or wall shall be erected within any TOC zoning district that isolates any property, or otherwise inhibits connectivity and the availability of shared parking, with the exception of residential-only developments.

#### F. General

12. In the Justification Statement provided with this application, applicant points to other properties with the CF-1 zoning designation for the purpose of persuading the City that rezoning the subject property to CF-1 would be customary and consistent with City Code. Staff disagrees and finds that the CF-1 districts are not similarly situated. The subject property is located at an intersection of two local roads. All other properties within the CF-1 zoning designation are located on higher road classifications, such as collectors and arterials. These larger road classifications are better designed to manage additional trips that may be generated by community facility uses. The Broward County Trafficways Plan identifies the following road types within Margate:

- State Road 7 – Arterial
- Atlantic Boulevard - Arterial
- Banks Road – Arterial
- Copans Road – Arterial
- Royal Palm Boulevard – Arterial
- Rock Island Road - Arterial
- Margate Boulevard – Arterial
- Northwest 18<sup>th</sup> Street (from NW 66<sup>th</sup> Ave to SR7) – Collector
- Northwest 66<sup>th</sup> Avenue – Collector
- Melaleuca Drive – Local Road (not included in the Trafficways Plan)
- Alan Road - Local Road (not included in the Trafficways Plan)

## **II. CONSISTENCY WITH COMPREHENSIVE PLAN, ELEMENT I**

13. The Goals, Objectives, and Policies of Element I Future Land Use, of the Margate Comprehensive Plan, copied below, are applicable to the subject rezoning application, as the subject property is covered by the Margate Comprehensive Plan and this application has the potential bring new land uses together by introducing a CF-1 zoning district into a residential neighborhood. Under the guidance of Policy 2.3, staff reviews applicable landscape buffering and setback requirements of the CF-1 zoning district. As stated above in this document, the subject property does not conform to CF-1 setbacks, does not provide adequate off-street parking, and does not provide required landscape buffers. The proposed rezoning, therefore, *IS NOT CONSISTENT* with the above Goals, Objectives, and Policies of the Comprehensive Plan.

#### GOAL STATEMENT

*ENSURE THAT THE CHARACTER AND LOCATION OF LAND USES  
MAXIMIZE THE POTENTIAL FOR ECONOMIC BENEFIT AND THE*



*ENJOYMENT OF NATURAL AND MAN-MADE RESOURCES BY CITIZENS WHILE MINIMIZING THE THREAT TO HEALTH, SAFETY AND WELFARE POSED BY HAZARDS, NUISANCES, INCOMPATIBLE LAND USES, AND ENVIRONMENTAL DEGRADATION.*

Objective 2 Develop and implement land use programs to encourage the elimination or reduction of existing incompatible land uses and prevent future incompatible land uses.

Policy 2.3 Impacts of existing incompatible land uses shall be minimized through the requirements of land use codes and regulations, such as landscape buffering and setbacks.

14. In an email sent to Andrew Pinney (Margate staff) on September 11, 2020, counsel for the applicant wrote the following:

“Margate’s zoning code provides the following allowable uses in CF-1 (assuming land use compatibility) – Houses of worship, schools, hospitals, detoxification facilities, long-term care facilities (not including correctional, mental institutions, or veterinary hospitals), municipal buildings, fire stations, libraries, public offices, parks, playgrounds, reservations, and parking.

*Of course, some of those land uses probably wouldn’t be compatible at this particular property, such as hospitals or schools. But long term care facilities and/detox facilities are certainly compatible.” [emphasis added]*

Staff agrees with counsel’s assessment that some of the CF-1 uses are not compatible at the subject property. Under the direction of Section 31-7 of the Code of the City of Margate, staff is required to review this rezoning application under the presumption that the proposed development will have the maximum impact permitted under applicable land development regulations such as zoning regulations and the land use element of the Margate Comprehensive Plan. Hospitals are a use permitted by right within the CF-1 zoning district when located on a plot that is at least 40,000 square feet and at least 200 feet of street frontage. The subject property meets the acreage requirement for this use, and other CF-1 uses. When a use is permitted by right, the property owner need not seek further approval from the City Commission. This rezoning application is the only opportunity that the City Commission would have to exercise discretion over such incompatible uses.

As the subject property of this rezoning does not adhere to the adopted compatibility requirements of the Comprehensive Plan or the applicable Zoning and Land Development Regulations, and considering the fact that counsel for the applicant has admitted that CF-1 uses are not compatible at the subject property, this rezoning application *IS NOT CONSISTENT* with Policy 4.1 of Element I Future Land Use, of the Margate Comprehensive Plan.

Policy 4.1 Residential neighborhoods should be preserved and protected by rezoning existing districts which conflict with adopted land use categories. New residential districts should not be permitted adjacent to a existing non-compatible

use district, nor should a new non-compatible use district be permitted adjacent to an existing residential district.

15. An application for a rezoning is a development permit, as defined in Chapter 31 of the Code of the City of Margate and 163.3164, Florida Statutes. A rezoning is a means to provide a material change in the use of a property. As the subject property of this rezoning does not adhere to the adopted compatibility requirements of the Comprehensive Plan or the applicable Zoning and Land Development Regulations, this rezoning application *IS NOT CONSISTENT* with Policy 7.2 of Element I Future Land Use, of the Margate Comprehensive Plan.

Policy 7.2 All proposed development, shall be compatible with adjacent land uses.

16. The site was originally developed as a 10-unit, single story multi-family building. This application would drastically change the permissible uses of the property. A site plan application has not been filed with the Development Review Committee for the subject property since its initial development as a residential building. Counsel for the applicant has made it clear that there is no intention of filing a building permit for any improvements in the event this rezoning is approved. In an email sent to Andrew Pinney (Margate staff) on June 5, 2020, counsel for the applicant wrote the following:

“As you know, we are not seeking a building permit because there is no new development necessary for this change of zoning. Nothing in the structure or outside is being altered.”

Since a site plan application will not be reviewed by the DRC, staff cannot ensure compatibility of the potential new uses offered by the CF-1 zoning district and staff cannot ensure that the appropriate transitional design elements are incorporated into the subject property. Therefore, the subject rezoning application *IS NOT CONSISTENT* with Policy 13.9 of Element I Future Land Use of the Margate Comprehensive Plan.

Policy 13.9 Existing and proposed residential development shall be designed to be integrated into the existing neighborhoods created through the implementation of the TOC. Compatibility and appropriate transitional design elements will be reviewed at time of site plan review, consistent with the land development regulations adopted to implement the TOC land use category. Such regulations and review shall ensure that existing industrial uses will not become incompatible with new development and that new development shall provide buffers and site design in light of the existing land uses and continue to protect areas that may be located within a wellfield protection zone. Single-family detached dwellings units may be permitted as part of an overall residential mixed-use project consistent with the adopted land development regulations.

### **III. COMPLIANCE WITH FLORIDA STATUTES**

17. Under state law, this rezoning application is an application for a development permit. Approval or denial of a development permit would be considered a development order. All actions taken in regard to development orders by governmental agencies in regard to land covered by an adopted comprehensive plan or element shall be consistent with such plan or element as adopted. The subject property is covered by the Margate Comprehensive Plan. As has been demonstrated above, the rezoning application is not consistent with the adopted Margate Comprehensive Plan. Approving this rezoning application would be a violation of Florida Statute 163.3194.

163.3164 Community Planning Act; definitions

“(15) “Development order” means any order granting, denying, or granting with conditions an application for a development permit.

(16) “Development permit” includes any building permit, zoning permit, subdivision approval, *rezoning*, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.”

163.3194 Legal status of comprehensive plan

(1)(a) After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted.