

PLANNING AND ZONING BOARD REPORT

PZB Project Number 22-01500004: Request by Romi DiRoberto of Happy Car Sales for consideration of a Variance to allow a fence to be setback a minimum 5 feet from the front property line at 821 South Dixie Highway. LDR Section 23.4-4 requires that fences on commercial properties be set back to the minimum building setback line of 10 feet. The subject site is zoned Mixed-Use Dixie Highway (MU-DH) and has a future land use designation of Mixed-Use East (MU-E).

Meeting Date: October 19, 2022

Property Owner: Buyers Choice Auto Sales

Applicant: Romi DiRoberto

Address: 821 South Dixie Highway

PCNs: 38-43-44-21-15-253-0110

Size: 0.9298-acre lot / ±40,500 square feet

General Location: Southeastern 800 block of Dixie Highway

Existing Land Use:

Vehicle/Motorcycle/Moped/Motorscooter/
Golfcart/Boat rentals and sales

Current Future Land Use Designation: Mixed-Use East (MU-E)

Zoning District: Mixed-Use Dixie Hwy (MU-DH)

Location Map:



Proposed Fence Variance:



RECOMMENDATION

The documentation and materials provided with the application request were reviewed for compliance with the applicable guidelines and standards found in the City of Lake Worth Beach Land Development Regulations (LDRs) and for consistency with the Comprehensive Plan and the Strategic Plan. Staff has proposed conditions of approval including a condition requiring a continuous landscape screen with shade trees and a condition requiring the City Engineer's review and approval of the gate configuration for traffic safety. Staff is recommending that the PZB discuss the appropriateness of the proposed fence and accordion gate and determine if the request is consistent with the required variance criteria.

PROJECT DESCRIPTION

The applicant, Romi DiRoberto is requesting \pm 300 linear feet of fencing installed a minimum 5 feet from the front property line at 821 South Dixie Highway. Section 23.4-4 requires that a commercial fence be setback to the minimum building setback line, which is 10 feet. The subject site is located in the southeastern corner of the 800 block of Dixie Highway and has an existing nonconforming vehicle sales use. The property currently consists of a \pm 780 square foot building and a \pm 600 square foot building that are connected through a shared metal roof. The subject site is surrounded by commercial properties to the north, south, and east, as well as residential uses to the western rear portion of the property.

COMMUNITY OUTREACH

Staff has not received public comments regarding the 821 South Dixie Highway variance.

BACKGROUND

The subject site is a 40,500 square foot commercial lot. The existing \pm 780 square foot building was constructed in 1946 and the existing \pm 600 square foot building was constructed in 1947. The subject property's existing conditions and structures are not consistent with the City's Land Development Regulations (LDRs) or the Major Thoroughfare Design Guidelines, including the requirement that the front building setback shall be a minimum of 10 feet not to exceed 22 feet from the front property line and to include a continuous landscape screen within the front setback. The existing structure is setback \pm 28 feet from the front property line. The existing use of the lot and structures is classified as Vehicle/Motorcycle/Moped/Motorscooter/Golfcart/Boat rentals and sales. The use is non-conforming as the property does not meet the minimum site area (2.50 acres) required for this use. However, as the subject property has had an active business tax receipt (BTR) for an Auto Dealer Over 20 Vehicles since 2002 and has been in continuous use based on the business license history, the non-conforming use may continue subject to the provisions in Section 23.5-3 Nonconformities.

The applicant has stated in their variance application that the proposed variance would allow them to secure their vehicle inventory. If the variance request is approved, the applicant will be required to submit a minor site plan amendment to install the proposed fence.

Below is a fence timeline summary based on City records:

- 1946 – A \pm 780 square foot building was constructed.
- 1947 – A \pm 600 square foot building was constructed.
- 04/29/2020 – Permarc Development applied for a fence permit. The permit failed plan review because a site plan modification was required. The fence permit is currently open.
- 12/16/2021 – A site plan modification was approved to add fencing around the property and to add bollards a minimum of 6 inches from the front property line.
- 03/07/2022 – The new tenant, Happy Car Sales, applied for a City business license.

- 04/04/2022 – The property was cited by Code Enforcement for installing a fence without a building permit.
- 05/02/2022 – Oceanview Renovations applied for a fence permit. The permit failed plan review because it did not match the previously approved site plan. The fence permit is currently open.
- 05/10/2022 – The business license Use & Occupancy inspection was conducted. The business license was put on hold due to open permits on the property.
- 07/22/2022 – The applicant applied for a variance to allow a fence in front of the required building setback.

ANALYSIS

Consistency with the Comprehensive Plan and Strategic Plan

The subject site has a Future Land Use (FLU) designation of Mixed-Use East (MU-E). Per Policy 1.1.1.5, the MU-E category is intended to provide for a mixture of residential, office, service, and commercial retail uses within specific areas east of I-95, near or adjacent to the central commercial core and major thoroughfares of the City. The preferred mix of uses area-wide is 75% residential and 25% non-residential. While mixed-use projects are allowed on a single site, it is not a requirement that each site within the category incorporate multiple uses. The variance request does not propose to change the commercial vehicular use of the property, which is an existing non-conforming use. The proposed variance would allow for a five (5) foot fence setback with a continuous landscape screen that would screen the vehicular use area, reducing the visual impact of the non-conforming use and site conditions. Therefore, the proposal will generally improve the corridor aesthetics over the existing conditions, which are permitted to continue subject to the provisions in Section 23.5-3, Nonconformities. The review of the strategic plan is not applicable to an improvement of this scale.

Based on the analysis above, the proposed variance is consistent with the goals, objectives, and polices of the City of Lake Worth Beach's Comprehensive Plan and the Strategic Plan.

Consistency with the City's Land Development Regulations

Per Section 23.2-26, variances are authorized for height, area, size of structures, size of yards, parking requirements, and other area requirements and open spaces. The Department of Community Sustainability is tasked in the Code to review variance applications for consistency with the City's LDRs, for compliance with the findings for granting variances (analyzed in the next section), and to provide a recommendation for approval, approval with conditions, or denial.

Analysis: As stated in the background section, the subject property is non-conforming with the City's LDRs in use, structure, lot, and site development requirements including but not limited to maximum impermeable surface and minimum building setback. Non-conformities are allowed to continue as consistent with the provisions in Section 23.5-3, Nonconformities. The proposed variance is to allow for the aluminum fence to be setback a minimum of 5 feet from the front property line. The proposed accordion gate is a manual gate that will remain open during business hours. Staff has proposed a condition of approval requiring review and approval of the gate location and operation by the City Engineer. The current site has an existing landscape screen and does not meet the City's landscaping code, including Section 23.6-1(c)(2), New and existing multiple-family, commercial and industrial development. The landscape area in front of the proposed fence is large enough to allow the property to comply with the landscape code in that area. Therefore, staff recommends a condition of approval to provide a continuous landscaping screen and shade trees made up of predominately native species.

Section 23.2-26(b) Regular findings of approval

The land development regulations require all variance requests to be analyzed for consistency with Section 23.2-26(b), Variances. Staff has reviewed the application in regards to this section which the analysis outlined is as follows:

1. Special circumstances or conditions exist which are peculiar to the land or building for which the variance is sought and do not apply generally to nearby lands and buildings, and that this is not the result of action of the applicant.

Staff Analysis: The subject site is used for vehicle sales. Part of that use, the applicant keeps a portion of their vehicle inventory within the west side of the property adjacent to the Dixie Highway thoroughfare. The applicant narrative indicates that the existing business has had multiple break-ins and altercations with trespassers after business hours. The purpose of the proposed fence is to provide additional site security. The applicant has stated that if the fence were to meet the current LDRs to set the fence back to the front building line, they would lose a significant amount of parking area. The required 10-foot setback would remove approximately $\pm 1,500$ square feet of area and would remove 20 parking spaces from the site. **Meets Criterion.**

2. The strict application of the provision of these LDRs would deprive the applicant of any reasonable use of the land or building for which the variance is sought.

Analysis: The Applicant's project narrative states that if the proposed fence conforms to the current fence setback requirement of 10 feet that they would lose a significant amount of area ($\pm 1,500$ square feet), which would deprive them of reasonable use of the property as the lost area would no longer be usable by their business. Further, the Applicant states that as the tenant they will continue to be responsible to pay rent for the use of the entire lot including the unusable areas. In staff's analysis, the location of the fence along the rear of the landscape area fronting S. Dixie Highway is a logical location for the fence based on the site's existing development, and would allow for reasonable use of the property. Further, staff has added landscaping conditions of approval that balance necessary improvements to the visual appearance of the property with the functional component of improved security. **Meets Criterion.**

3. The variance proposed is the minimum variance which makes possible the reasonable use of the land or building.

Analysis: The Applicant states the proposed fence is the minimum variance to allow for reasonable use of land. The fence is proposed to be setback a minimum of 5 feet from the front property line close to the interior edge of the existing landscape area. Staff concurs that the location of the fence along the interior edge of the landscape area is logical and appropriate to allow for reasonable use of the property as it is currently configured. The property is very open to Dixie Highway and the Applicant states that they have experienced security issues on the property. The subject request would allow for the property to fully fenced, providing additional security for the vehicle sales inventory and allowing for the existing site circulation and parking to be maintained. **Meets Criterion.**

4. The granting of the variance will be in accordance with the spirit and purpose of this chapter, and will not be unduly injurious to contiguous property or the surrounding neighborhood nor otherwise detrimental to the public welfare.

Analysis: Staff has proposed a condition of approval requiring that the Department of Community Sustainability and the City Engineer review and approve the gate location and operation at minor site plan review. The front property line currently contains a landscape screen with a mixture of palms and hedging. Staff has also conditioned the approval to a native or drought tolerant continuous landscape screen with a minimum average height of three (3) feet for shrubs and native shade trees to provide additional screening of the business use area. As conditioned, the proposed request is in accordance with the spirit and purpose of the LDRs as conditioned. **Meets Criterion.**

CONCLUSION AND CONDITIONS

Based on staff analysis, the variance request generally complies with all the variance criteria outlined above as conditioned. The applicant's request to install approximately 300 linear feet of 5-foot tall black aluminum fencing with matching accordion gates to be setback a minimum of 5 feet from the front property line. **Staff is recommending that the PZB discuss the appropriateness of the proposed fence location and accordion gate and determine if the proposed variance is consistent with the required variance criteria. Staff has drafted conditions of approval including a condition requiring a continuous landscape screen with shade trees and a condition requiring the City Engineer's review and approval of the gate configuration.**

1. A Minor Site Plan Amendment shall be required to reduce non-conformities with the City's landscaping requirements insofar as feasible and provide a continuous landscaping screen with new native shade trees along the S. Dixie Highway right-of-way.
2. The landscape screen shall predominately consist of native species.
3. Required landscape screen must be a minimum of 2 feet in height at the time of planting and the entire landscape screen must attain an average minimum height of 3 feet within a year of planting.
4. The Department of Community Sustainability and the City Engineer shall review and approve the gate location and operation at minor site plan review.
5. The variance shall be void upon redevelopment of the property and/reconfiguration of the vehicular use areas.

BOARD POTENTIAL MOTION:

I MOVE TO APPROVE PZB PROJECT NUMBER 22-01500004 with staff recommended conditions for a **variance** to install approximately 300 linear feet of black aluminum fencing and gate setback a minimum of 5 feet from the front property line. The application meets the variance criteria based on the data and analysis in the staff report.

I MOVE TO DISAPPROVE PZB PROJECT NUMBER 22-01500004 for a fence and gate **variance**. The project does not meet the variance criteria for the following reasons [Board member please state reasons.]

Consequent Action: *The Planning & Zoning Board's decision will be final decision for the Variance. The Applicant may appeal the Board's decision to the City Commission.*

ATTACHMENTS

- A. Zoning Map
- B. Application Package (survey, site plan, landscape plan & supporting documents)