

## **955-975 S Congress**

### Rezoning & Future Land Use Amendment

#### Justification Statement

October 15, 2024

### **INTRODUCTION**

On behalf of the applicants, Properties of Delray, Inc. and Nathan Properties, Inc., please accept this as our formal request for rezoning and amendment of the Future Land Use (FLU) designation for a property located within the boundary of the City of Delray Beach. The subject property is approximately 4.27 acres and is located along S. Congress Avenue. The applicant is proposing to continue the current use of the property under the guidance of the Commerce (COM) FLU designation and the Mixed Industrial and Commercial (MIC) district. The property has a FLU designation of Congress Mixed Use (CMU) and a zoning designation of Mixed Residential, Office Commercial (MROC). Per the requirements of the Comprehensive Plan and Land Development code for the City of Delray Beach, the standards for rezoning and Comprehensive Plan Map Amendment petitions are addressed herein for consideration.

The existing use of the subject site includes 70,396 square feet of commercial/office/warehouse space, in two (2) 35,198 square foot buildings. The proposed amendments will allow the subject site to operate in conformity with the FLU designation and land development regulations. Due to the city-initiated rezoning of the property in 2007, currently, the building is reliant on the provision of the code which states:

#### **Discontinuance of use. (Ord. No. 20-18, § 2, 11-27-18)**

- (a) If any nonconforming use of a structure ceases for any reason for a continuous period of 180 days as to its then current use, every subsequent use of the structure shall conform to the requirements specified for the zoning district in which it is located.

#### **Applicant/Owner**

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#### **Agent**

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## PROJECT LOCATION

The subject property is located along Congress Avenue in the City of Delray Beach. The property is at the northeast corner of South Congress Avenue and Lowson Boulevard. The total site area is approximately 4.27 acres. The property has a CMU FLU and a MROC Zoning designation. The property lies directly west of Interstate 95 and the South Florida Rail Corridor.

## SURROUNDING LAND USE AND ZONING

Adjacent Property	FLU	Zoning District	Land Use
North	CMU	MROC	Light Industrial/Commercial Warehouse
South	CMU	MROC	Commercial/Retail/Gas Station
East	Conservation (CON)	Conservation District (CD)	South Florida Rail Corridor
West	Transitional (TRN)	Medium Density Residential (RM) & Professional Office District (POD)	Multifamily residential & Professional Offices

## REQUEST

The Applicant and property owner are proposing to rezone and amend the FLU of the subject site in order to maintain compliance with the land development code.

The property has experienced many challenges to sustainable operations with the adoption of the MROC zoning district regulations. These challenges include the ability to secure new tenants and securing permits for minor maintenance or renovations to accommodate the nonconforming uses. Despite these challenges, the Property owner has developed this strategy in a collaboration with City staff, which would allow full utilization of the property which aligns with its established range of uses.

The challenges began when the property was rezoned in a city-initiated amendment to the zoning map, to facilitate a vision for development of the Congress Avenue corridor.

The corridor has since been studied, in an analysis conducted by Streetsense and CBRE in May of 2023. The study comprised of a needs assessment and sets forth several

recommended strategies, “to balance adopted policy with market reality and the corridor's existing strengths. Strategies will also inform future resource allocation, policy and programming decisions, and critical next steps for the City to take toward achieving a balanced future for the corridor.”

*“The MROC zone is home to existing light-industrial businesses that, due to the zoning, are no longer allowed by right. Instead, they are considered nonconforming uses, which renders them incompatible with uses allowed by the zone and disallows property and business owners from improving their property for these uses through physical expansion. This substantially limits the existing light-industrial clusters from thriving into the future when many uses may actually be residentially compatible. Uses like recreational establishments, theaters, light manufacturing, fabrication, and assembly, breweries and distilleries, on-site repair of electronics, and other similar uses are currently unacknowledged or prohibited by the zone. Broadening allowances around uses for which there is demand reduces the risk of vacancy in existing and future development, especially considering the low demand for retail and office use.”*

*“The MROC zone, intended to encourage transit-supported, walkable mixed-use development, spans nearly two and a half miles of the Congress Avenue corridor south of Atlantic Avenue. [...] Successful transit-oriented development is typically concentrated around transportation hubs with ground-floor activation within a ¼ mile walking distance or less. Therefore, mixed-use, as envisioned, should be encouraged within 1,000 feet of the [train] Station where there is additional opportunity given the future redevelopment of the 28-acre County-owned property.”  
(Streetsense/CBRE, 2023)*

The study found that identifying a solution for the properties within the MROC district is essential to address the limitations that currently hinder the growth and viability of existing light industrial businesses, which have become nonconforming due to new regulations.. The long-standing establishment was designed only to support the light industrial uses which have occupied the space, features high-dock loading in the center courtyard, and would not have the parking capacity to support uses with a greater parking requirement. Therefore, this request for rezoning serves as an immediate solution to alleviate the current operational challenges, enabling the property to thrive in the existing market conditions. Additionally, the subject site is approximately 0.7 miles walking distance from the Delray Beach Train Station – beyond the ideal threshold for concentrated, transit-oriented development. Streetsense and CBRE through their research, acknowledged the adverse impacts of the MROC zoning district regulations

and strongly recommended alternative regulatory strategies for the subject area. The property owner cannot afford further delays in tenant acquisition, and therefore requests a change to the zoning district that supports the use of the site, and an amendment to the future land use of the site to maintain consistency in accordance with the City's comprehensive plan.

## Required Findings

### Rezoning

According to the city's code, "valid reasons for approving a change in zoning are:

1. The zoning had previously been changed, or was originally established, in error;
2. There has been a change in circumstance which makes the current zoning inappropriate;
3. The requested zoning is of similar intensity as allowed under the Land Use Map and that it is more appropriate for the property based upon circumstances particular to the site and/or neighborhood."

The requested change in zoning is consistent with the valid reasons mentioned above. The zoning was previously changed by the city in 2007 to the MROC district, effectively rendering the uses of the site nonconforming. While the uses are legal nonconformities, and new tenants seeking to occupy the site and operating the same uses may still use the site, the tenant suites in the buildings may not remain unoccupied for more than 180 days. Otherwise, only uses consistent with the MROC zoning district may locate at the site. The current zoning is inappropriate for the long-established use of the site.

The requested MIC district offers less intensity as is permitted under the current FLU and zoning designations. The MIC District is more industrial and service-oriented with limited retail and residential options, while the MROC District encourages a mix of residential, commercial, and recreational uses in a higher-density, urban setting.

The current zoning district is inappropriate for the development and inconsistent with the light industrial cluster located in the vicinity of the subject site. The MIC district offers a better regulatory framework for the existing uses of the site, and while the permitted uses are different, the MIC district better facilitates the existing character of the site, which fits into the fabric of the existing community.

FLU Maximum Intensity	
CMU	Up to 40 dwelling units per acre/ 2.5 FAR
COM	0.6 FAR

## Comprehensive Plan Map Amendment

- A. Land Use Map.** The resulting use of land or structures must be allowed in the zoning district within which the land is situated and said zoning must be consistent with the applicable land use designation as shown on the Land Use Map. [Amd. Ord. 13-99 3/16/99] (Ord. No. 23-20, § 9, 9-10-20)

**Response:** The MIC zoning district is consistent with the COM FLU designation. The existing use of the site is commercial warehouse/office/light industrial which is consistent with the proposed FLU designation and zoning district, according to the Neighborhoods, Districts, and Corridors element of the comprehensive plan.

- B. Concurrency.** Concurrency as defined by Objective NDC [3.1](#) of the Neighborhoods, Districts, and Corridors Element of the adopted Comprehensive Plan must be met and a determination made that the public facility needs, including public schools, of the requested land use and/or development application will not exceed the ability of the City and The School District of Palm Beach County to fund and provide, or to require the provision of, needed capital improvements in order to maintain the Levels of Service Standards established in Table CIE-2, Level of Service Standards, of the Capital Improvements Element of the adopted Comprehensive Plan of the City of Delray Beach. [Amd. Ord. 13-99 3/16/99] (Ord. No. 23-20, § 9, 9-10-20)

**Response:** No change of use, nor increase in intensity are requested as part of this application. Therefore, the applicant respectfully requests an exemption from this requirement.

- C. Consistency.** A finding of overall consistency may be made even though the action will be in conflict with some individual performance standards contained within [Article 3.2](#), provided that the approving body specifically finds that the beneficial aspects of the proposed project (hence compliance with some standards) outweighs the negative impacts of identified points of conflict. [Amd. Ord. 13-99 3/16/99]

**Response:** The proposed FLU amendment and rezoning are generally consistent with all performance standards.

- D. Compliance with LDRs.** Whenever an item is identified elsewhere in these Land Development Regulations (LDRs), it shall specifically be addressed by the body taking final action on a land development application/request. Such items are found in [Section 2.4.5](#) and in special regulation portions of individual zoning district regulations. [Amd. Ord. 13-99 3/16/99]

**Response:** All required standards associated with the requested rezoning and comprehensive plan map amendment are being outlined within this statement. The

continued uses of the site are in compliance with the regulations of the MIC zoning district regulations, specifically:

***Special regulations.***

- i. Loading and unloading is restricted to side and rear yards and is prohibited within the front yard setback. (Ord. No. 32-23, § 24, 10-17-23)

**Response:** All loading activity takes place in the side yards of both building, between the buildings there are designated loading docks.

- ii. Within the front yard setback, the first ten feet abutting the right-of-way shall be a landscaped area with no paving, except for driveways and walkways leading to the premises. Such driveways and walkways shall be generally perpendicular to the property line. (Ord. No. 32-23, § 24, 10-17-23)

**Response:** A minimum of 10 feet of landscaped area is maintained abutting both the Congress Avenue and Lowson Boulevard rights of way.

- iii. Overhead doors may not face a public right-of-way. [Amd. Ord. 58-95 11/07/95] (Ord. No. 32-23, § 24, 10-17-23)

**Response:** All existing overhead doors of each building do not face the rights of way.

- iv. Except for outside storage approved pursuant to [Section 4.6.6\(C\)\(2\)](#), all principal and conditional uses shall be conducted within an enclosed building. [Amd. Ord. 58-95 11/07/95; Amd. Ord. 75-94 10/18/94]

**Response:** All uses and future uses of the site are and will be conducted within the enclosed buildings.

**Performance Standards**

**Standards for Rezoning Actions.**

- A. The most restrictive residential zoning district that is applicable given existing development patterns and typical lot sizes shall be applied. Requests for rezonings to a different zoning designation, other than Community Facilities, Open Space, Open Space and Recreation, or Conservation shall be denied unless the proposed changes implement an adopted neighborhood or redevelopment plan. [Amd. Ord. 13-99 3/16/99] (Ord. No. 23-20, § 11, 9-10-20)

**Response:** The proposed amendments do not implement an adopted neighborhood or redevelopment plan, however, the amendments will preserve the viability of the site and the uses it accommodates. This is consistent with

goals ECP 3 and 4 of the Economic Prosperity Element of the Comprehensive Plan, to support existing businesses and industry clusters.

- B. Rezoning of land located west of Interstate-95 to accommodate auto dealerships or to AC (Automotive Commercial) is prohibited pursuant to Policy NDC 2.5.2 of the Neighborhoods, Districts, and Corridors Element of the adopted Comprehensive Plan. [Amd. Ord. 13-99 3/16/99] (Ord. No. 23-20, § 11, 9-10-20)

**Response:** Not applicable.

- C. Zoning changes that would result in strip commercial development shall be avoided. Where strip commercial developments or zoning currently exists along an arterial street, consideration shall be given to increasing the depth of the mixed-use zoning to provide for more substantive, mixed use projects that provide compatible transitions in form and use to the surrounding area. [Amd. Ord. 13-99 3/16/99] (Ord. No. 23-20, § 11, 9-10-20)

**Response:** The MIC zoning district aims to provide a mix of industrial, commercial, and office uses. The focus is on industrial, manufacturing, and trade sectors with supporting business and professional office functions. Retail uses are secondary and limited, while residential development is generally restricted, except within a designated overlay district. This is consistent with the surrounding uses and better accommodates the existing use of the site.

- D. Rezoning of land shall result in allowing land uses deemed compatible with adjacent and nearby land uses both existing and proposed; or that if an incompatibility may occur, that sufficient regulations exist to properly mitigate adverse impacts from the new use. [Amd. Ord. 13-99 3/16/99] (Ord. No. 23-20, § 11, 9-10-20)

Response: The proposed rezoning is designed to enhance compatibility with the surrounding land uses by allowing for the light industrial development that aligns with the character of the area. The amendments will not only preserve the existing businesses but also support potential future uses that are consistent with the needs of the community. Additionally, the city's regulations include provisions to mitigate any adverse impacts that may arise from any future redevelopment of the site, ensuring that the development remains harmonious with nearby properties.

- E. Remaining infill lots within the Coastal High Hazard Area of the Coastal Planning Area shall be developed using zoning which is identical or similar to the zoning of adjacent properties or that results in less intense development. [Amd. Ord. 13-99 3/16/99] (Ord. No. 23-20, § 11, 9-10-20)

**Response:** Not applicable.

### Traffic

A traffic analysis has been created for the proposed rezoning and FLU amendment. The maximum intensity of the COM FLU designation would result in a net reduction in potential traffic trips from the maximum intensity permitted under the CMU FLU designation. There is also a net reduction with the change from MROC to MIC. The proposed change results in a net decrease of 17,553 daily trips, a decrease of 1,207 AM peak hour trips, and a decrease of 1,564 PM peak hour trips.

## **Conclusion**

The proposed rezoning and amendment of the Future Land Use designation for the property at 955-975 S Congress Avenue aims to ensure compliance with land development regulations while addressing the challenges posed by the existing MROC zoning. By facilitating the continuation of light industrial, office, and commercial operations, the amendments align with the City of Delray Beach's goals for economic sustainability and will further the objectives outlined in the Delray Beach Congress Avenue Strategies Study completed in Spring of 2023. This strategic change not only supports existing businesses but also positions the property for future opportunities, ultimately contributing to the revitalization and prosperity of the Congress Avenue corridor. On behalf of the applicant, please accept this as our formal request for Rezoning to MIC and a Comprehensive Plan Map Amendment to COM.