



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

## PLANNING & ZONING BOARD STAFF REPORT

### 1177 Moderne SAD

Meeting	File No.	Application Type
January 25, 2021	2020-173-REZ	Rezoning
Owner	Applicant	Agent
GB 1177, LLC	GB 1177, LLC	Seaside Builders / Cristofer A. Bennardo, Esq., Padula Bennardo Levine, LLP

### Request

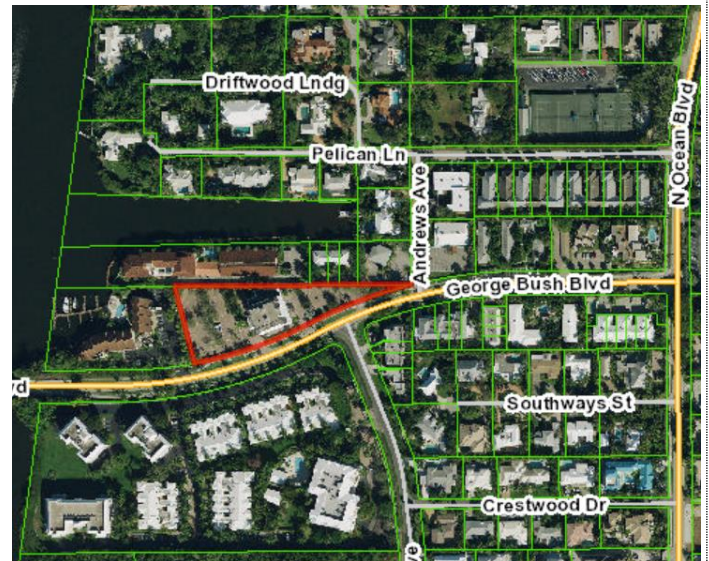
Provide a recommendation to the City Commission on Ordinance No. 04-21, a privately-initiated request to rezone the HHH Building Special Activities District (SAD) to the 1177 Moderne Special Activities District (SAD) on the property located at 1177 George Bush Boulevard, repealing the adopted development standards for the existing HHH Bush Building SAD adopted by Ordinance No. 38-84 and subsequently amended by Ordinance No. 39-90 and Ordinance No. 01-11, and adopting new development standards in the subject ordinance.

### Background Information

The 1.39-acre subject property (highlighted in red on the map) is located at 1177 George Bush Boulevard, immediately north of George Bush Boulevard between Andrews Avenue to the east and the Intracoastal Waterway on the west. In September 2020, the 27,528 SF five-story office building (built in 1963) was demolished, and the property is now vacant.

The property has a land use designation of TRN (Transitional), which has a standard density of 5 – 12 dwelling units per acre (du/ac) and a floor area ratio (FAR) of 1.0. The property has been zoned SAD since 1984, when it was rezoned from RM-10 (Multiple Family Residential, 10 du/acre). The uses allowed by the approved HHH Building SAD, general and professional offices, were established as conditional uses, subject to the completion of required site improvements. The HHH Building SAD also allowed all uses permitted in the RM-10 zoning district, subject to the same condition. As the building was built in 1963, and the SAD was established in 1984, limited site development standards were adopted.

The HHH Building SAD was amended in 1990 to revise the list of conditional uses and to add sign regulations. In 2011, the SAD was amended to change all conditional uses to permitted uses, and to allow a single residential condominium unit as a fifth-floor use with no more than four bedrooms and 4,925 SF.



### Description of Proposal

The rezoning request is to retain the designation as SAD for the purpose of developing the property as a 16-unit residential condominium with private, resident-only amenities. The list below outlines the proposed development standards and associated requirements for the 1177 Moderne SAD.

**Project Planner:**  
Rebekah Dasari, Senior Planner;  
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561.243.7044

**Attachments:**

- Applicant Justification Statement
- Ordinance No. 04-21, Rezoning

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### Permitted Uses:

- 3-story, 16-unit residential condominium and private club with spa and thermal suite, pool, fitness center, dog park, and pavilions, which shall only be available to residents of the development and their guests.

### Development Standards:

- Intensity / Floor Area Ratio (maximum): 1.0
- Density (maximum): 12 dwelling units / acre
- Setbacks (minimum): Front-50 feet from the centerline of George Bush Boulevard, pursuant to the adopted regulations for this segment of George Bush Boulevard in LDR Section 4.3.4(H)(1); Rear and Side- 15 feet
- Building Height (maximum): 48 feet
- Lot Coverage (maximum): 40 percent, which is the maximum amount of the lot which may be devoted to coverage by a structure or structures.
- Open Space (Minimum): Non-vehicular land area, equal to at least 25 percent of the total SAD area, including the perimeter landscaped boundary and landscape area required to meet internal parking lot design requirements
- Structure Size (minimum): Any free-standing structure shall have a minimum floor area of 400 square feet and shall be architecturally consistent with other structures in the development plan.
- Fences and Walls: All fences and walls shall conform to the Land Development Regulations height and setback requirements.
- Except as specifically set forth above, the development standards shall apply as established in Section 4.4.25(E) and Section 4.3.4 of the Land Development Regulations, as applicable to the MF – Medium Density Residential Zoning District.

The previously adopted regulations will be repealed in entirety and replaced by the development standards in Ordinance No. 04-21; the name of the SAD will be changed from the HHH Building Special Activities District to the 1177 Moderne SAD.

### Review and Analysis

Pursuant to **LDR Section 3.1.1, Required Findings**, *prior to the approval of development applications, certain findings must be made*. These findings relate to the Land Use Map, concurrency, consistency, and compliance with the Land Development Regulations.

- **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.*

The subject property has a Land Use Map (LUM) designation of TRN (**Exhibit "A"**), and the existing and proposed zoning district is SAD (**Exhibit "B"**). Pursuant to Table NDC-1 of the adopted Comprehensive Plan, the SAD zoning district is deemed compatible with the Transitional LUM designation. Additionally, the uses allowed within a specific SAD shall be consistent with the land use designation shown on the Land Use Map. The proposed multi-family residential condominium is consistent with the land use category. The proposed development does not, however, fully "*address varied community needs, unique development patterns, and/or distinctive uses*" that Policy NDC 1.3.13 requires of the Transitional land use designation. While the parcel is a unique configuration that makes development of the site more challenging, the luxury multi-family residential product is not a unique or distinctive use of the land.

- **Concurrency:** Pursuant to Section 3.1.1(B), Facilities which are provided by, or through, the City shall be provided to new development concurrent with issuance of a Certificate of Occupancy. These facilities shall be provided pursuant to levels of service established within the Comprehensive Plan.

A positive finding of concurrency must be made as it relates to water and sewer, streets and traffic, drainage, parks and recreation, open space, and solid waste.

**Schools.** The School Capacity Availability Determination (SCAD) letter received by the applicant projects an impact of 3 new elementary school students, and 2 new students for both middle school and high school. The development is determined to have a negative impact on the public school system at the elementary school level. The applicant is required to contribute \$11,646 to the School District of Palm Beach County to offset the impact prior to issuance of the building permit.

**Water and Sewer.** The existing development has water and sewer service. The proposed development is anticipated to have a reduction in sewage of 129 gallons per day (GPD) from the prior office use.

**Solid Waste.** Multi-family units with 5 or more units are calculated to generate 0.52 tons of solid waste per unit per year, which represents a reduction from the previous office use which generated 74.3 tons per year (5.4 pounds per square foot per year x 27,528 square feet / 2,000 = 74.3 tons). The landfill serving the property is projected to have sufficient capacity to meet the needs of city residents through the depletion year in 2047.

**Drainage.** The previously adopted SAD required all drainage to be handled on-site. The subsequently adopted Comprehensive Plan Policy CME 3.4.1 requires the same of new developments: "Continue to require management of stormwater on site to the maximum degree feasible in all development and redevelopment on the barrier island to minimize its impact on the City's stormwater system and compliance with the City's Stormwater Master Plan." The proposed drainage plan meets the 10-year, 24-hour criteria for stormwater.

**Parks, Recreation, and Open Space.** Policy OPR 3.2.3 "Require[s] new developments provide central focal points at entries and landscape buffers along the external (arterial, collector) streets that service them. [...]" This requirement will be addressed during site plan review. Additionally, park impact fees are assessed at \$500 per dwelling unit; the fee will be calculated with the site plan review and collected prior to issuance of the building permit.

**Traffic.** A traffic statement dated May 6, 2020 was submitted with the request. In comparison to the existing development and uses allowed, the traffic statement projects a decrease of 187 daily trips, a decrease of 41 trips during the AM peak hour, and a decrease of 22 trips during the PM peak hour at a buildout in 2021.

- **Consistency:** Compliance with performance standards set forth in Chapter 3 and required findings in LDR Section 2.4.5(D)(5) for the Rezoning request shall be the basis upon which a finding of overall consistency is to be made. Other objectives and policies found in the adopted Comprehensive Plan may be used in making a finding of overall consistency.

Pursuant to **Section 3.2.2 - Standards for Rezoning Actions**, rezoning requests must meet five standards, which are described below as they relate to the proposed rezoning under consideration.

- (A) *The most restrictive residential zoning district that is applicable given existing development patterns and typical lot sizes shall be applied to those areas identified as "stable" and "stabilization" on the Residential Neighborhood Categorization Map. Requests for rezonings to a different zoning designation, other than Community Facilities, Open Space, Open Space and Recreation, or Conservation shall be denied.*

The subject property is in the area characterized as Stable on the Residential Neighborhood Stabilization map (See attached Always Delray Map AD-5). The applicant is requesting SAD zoning. Although the proposed residential use is more compatible with the area than the office use approved in the existing

SAD, the requested SAD development standards are not the most restrictive zoning that could be applied to the site. Medium Density Residential (RM) zoning, which would allow the applicant to provide a multi-family condominium, is a more appropriate zoning designation while maintaining the existing development pattern and typical lot size.

A comparison of the proposed SAD standards and RM zoning standards is provided in the chart below and indicates the following differences:

- increased height from 35 feet to 48 feet;
- reduced minimum setback along the rear of the property from 25 feet to 15 feet;
- reduced additional front setback for the 3<sup>rd</sup> story and above for an additional five feet;
- reduced additional side interior setback for the 3<sup>rd</sup> story and above from 30 feet to 15 feet;
- reduced side street setback for the 1<sup>st</sup> and 2<sup>nd</sup> stories from 25 feet to 15 feet; and,
- reduced additional side street setback for the 3<sup>rd</sup> story and above from 30 feet to 15 feet.

	Density	Setbacks	Building Height	Lot Coverage	Open Space
<b>Proposed SAD</b>	12 du / acre (as established in the SAD)	All stories: Front – 50 feet (to C/L of ROW)* Side – 15 feet Rear – 15 feet	Maximum of 48 feet (36 feet proposed in the submitted site plan).	40 %	25 %
<b>RM – Medium Density Residential</b>	6-12 du / acre (standard), 12-24 du / acre (revitalization)	1 <sup>st</sup> & 2 <sup>nd</sup> Stories / 3 <sup>rd</sup> Story Front – 25/30 feet Side Interior – 15/30 feet Side Street – 25/30 feet Rear – 25 feet	35 feet	40 %	25 %

\* Pursuant to LDR Section 4.3.4(H)(6)(a), Special Building Setbacks, along George Bush Boulevard, between North Swinton Avenue and A-1-A, a 50-foot setback shall be provided on both sides of the centerline.

The proposed building coverage on the Master Development Plan is 37.6 percent. The total impervious surfaces comprise 65.7 percent of the property.

In addition to the above, developments in RM zoning that exceed six dwelling units per acre must adhere to additional performance standards in Section 4.4.6(I). Section 4.4.6(I)(2) specifically addresses smaller infill projects: “...some of the above referenced standards may not be entirely applicable to small, infill type residential projects. For those types of projects, the ultimate density should be based upon the attainment of those standards which are applicable, as well as the development's ability to meet or exceed other minimum code requirements.” These performance standards should be considered in determining if the proposed rezoning meets the standard.

(B) Rezoning to AC (Automotive Commercial) to accommodate auto dealerships shall not be permitted west of I-95.

Not applicable. This property is located east of I-95, and neither the existing SAD nor the requested amendment allow auto dealerships.



- (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 should be given to increasing the depth of the commercial zoning in order to provide for better project design.*

Not applicable. The subject property is requesting a rezoning to a residential use SAD.

- (D) *That the rezoning shall result in allowing land uses which are deemed compatible with adjacent and nearby land use both existing and proposed; or that if an incompatibility may occur, that sufficient regulations exist to properly mitigate adverse impacts from the new use.*

Under the proposed Transitional land use, Special Activities District (SAD) is considered a compatible zoning district. SAD zoning allows applicants to propose their own regulations for a particular development. The proposed allowable use in the 1177 Moderne SAD is multi-family residential condominium with amenities. As discussed above, the existing uses, land use, and zoning surrounding the proposed development is almost entirely multi-family residential.

When considering only the density, the proposed 16 condominium units at a density of 12 dwelling units / acre maintains the character of the surrounding area. Landings of Delray Beach, to the south, has a density of 7.78 dwelling units / acre. The Inlet Cove condominiums to the west has a density of 11.42 dwelling units per acre. Waterway North condominiums, to the north of the property, has a density of 12 dwelling units per acre.

However, when considering the building scale and mass, the proposed maximum height and minimum setbacks differ from the adjacent and nearby developments. The proposed height is 48 feet (generally four stories), whereas a majority of the adjacent multi-family developments contain three-stories or less:

- Landings of Delray Beach (south, across George Bush Boulevard): two and four-story buildings. The two-story buildings (ca. 2001) are directly across from the subject property. The four-story buildings (ca. 1990) are to the southwest and adjacent to the Intracoastal.
- Inlet Cove condominiums (west, adjacent to the Intracoastal Waterway): three-story buildings.
- Waterway North condominiums (north, rear): three-story buildings
- Moore's Landing (north, rear): 2-story, 3-unit building

The Board should consider whether mitigation of impacts on these adjacent residential properties, which are generally of a lower scale and mass, has been provided. Mitigation is typically provided in the way of increased setbacks (particularly at upper stories) and additional landscaping along the buffer area at a minimum height including shade trees or other trees or vegetation that can provide ample screening. It should also be considered that while the maximum height for SAD zoning is 48 feet, the proposed development standards can specify a lower maximum height (the plans provided indicate a height of 36 feet). An overall height reduction specific for this SAD would mitigate any potential negative impacts on the adjacent residential properties.

- (E) *Remaining, isolated infill lots within the coastal planning area shall be developed under zoning which is identical or similar to the zoning of adjacent properties; and, the resulting development shall be of a design and intensity which is similar to the adjacent development.*

The property is within the coastal planning area and is surrounded by MD land use and RM zoning. The proposed development density on the site is identical to the maximum density allowed by the surrounding

land use designation and zoning district. The proposed setbacks are not consistent with those required by the surrounding zoning district (as discussed above).

Pursuant to **LDR Section 2.4.5(D)(1)**, the City Commission may amend the Official Zoning Map by ordinance after review and recommendation for approval by the Planning and Zoning Board. **LDR Section 2.4.5(D)(2)** outlines the procedures for a zoning change. Valid reasons for approving a change in zoning are:

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

The request is most applicable to the third criteria. SAD is considered to be a compatible (but not preferred) zoning district for TRN land use, which is established to “allow a wide range of residential and low intensity nonresidential uses for properties with a Transitional land use designation to address varied community needs, unique development patterns, and/or distinctive uses” (Policy NDC 1.3.13). While the property is surrounded almost exclusively by multi-family development, with the exception of a professional office building and a residential office to the northeast, the proposed development does not necessarily “address varied community needs” or provide “distinctive uses”. The unique development pattern could be applied to the unique shape and configuration of the property.

The following goals, objectives, and policies from the Comprehensive Plan apply to the request:

**Policy NDC 1.3.13** *Allow a wide range of residential and low intensity nonresidential uses for properties with a Transitional land use designation to address varied community needs, unique development patterns, and/or distinctive uses.*

**Policy NDC 1.3.14** *Use the Transitional land use designation for properties located between two or more land use designations that allow different building scale, heights, uses, or levels of intensity to create development patterns that balance the changes in intensity relative to the specific, unique surrounding conditions.*

**Policy NDC 1.3.15** *Allow a maximum floor area ratio of 1.0, a maximum standard density of 12 dwelling units per acre, and a revitalization/incentive density of 12-24 dwelling units per acre in the Transitional land use designation to provide a mix of uses and potential development patterns to provide an appropriate scale, height, and intensity, and other essential transitions among areas with different land uses or levels of intensity.*

The project complies with the density and intensity standards for the TRN land use designation. The surrounding developments have a mixture of building heights. Landings of Delray Beach, to the south, has 2-story buildings immediately to the south of George Bush Boulevard, as well as 4-story buildings adjacent to the Intracoastal Waterway. The Inlet Cove condominiums to the west consist of 3-story buildings, as are the Waterway North condominiums, located to the north.

**Policy NDC 2.1.2** *The City shall not increase the net density within the Coastal High Hazard Area, including through incentive programs, zoning changes, or land use designation amendments.*

The proposed rezoning does not increase the net density within the Coastal High Hazard Area. Although the zoning change will allow an increase in residential dwelling units from one unit to 16, the density is limited by the maximum density of the TRN land use designation that does not allow for development at a density greater than 12 du / acre.

- **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.*

#### **Section 4.4.25 – Special Activities District (SAD)**

**LDR Section 4.4.25(A), Purpose and Intent:** *The Special Activities District (SAD) is established in order to provide a zone district which is appropriate for projects which are not otherwise classified or categorized in other zone districts; or, which for some other good reason, cannot be properly accommodated in the other zone districts. Also, the SAD is to be used for large scale and mixed projects for which conventional zoning is not applicable. While SAD zoning is deemed consistent with any land use designation on the Future Land Use Map, the uses allowed within a specific SAD shall be consistent with the land use category shown on the Future Land Use Map. The uses, activities, and characteristics of a SAD are to be consistent with the Comprehensive Plan, suitable and compatible with surrounding existing development, and with the proposed character of the area.*

While the land use and zoning are compatible, as well as the proposed permitted use, it is important to note the purpose and intent of SAD zoning.

*4.4.25(A), Purpose and Intent: The Special Activities District (SAD) is established in order to provide a zone district which is appropriate for projects which are not otherwise classified or categorized in other zone districts; or, which for some other good reason, cannot be properly accommodated in the other zone districts. Also, the SAD is to be used for large scale and mixed projects for which conventional zoning is not applicable. While SAD zoning is deemed consistent with any land use designation on the Future Land Use Map, the uses allowed within a specific SAD shall be consistent with the land use category shown on the Future Land Use Map. The uses, activities, and characteristics of a SAD are to be consistent with the Comprehensive Plan, suitable and compatible with surrounding existing development, and with the proposed character of the area.*

The applicant justification states that the proposed development is unique for two reasons: 1) the development provides luxury residential condominiums with an amenity package not offered elsewhere, and 2) the property is a unique shape that complicates the development of the site. No City regulation precludes the amenities offered by 1177 Moderne from being made available at any other multi-family development in one of the districts where multi-family development is allowed. Additionally, adoption of the proposed SAD is not the only path for the applicant to develop the site with “luxury residential condominium” units. The applicant could utilize the variance process to request the desired setbacks, or the site could be developed with a different product. Variances may not, however, be granted for an increase in height.

Further, the proposed luxury residential condominium could be accommodated in another zoning district – specifically, in RL, RM, PRD, GC, PC, CBD, MIC, and MROC. Therefore, given that the SAD zoning designation is limited to projects “which are not otherwise classified or categorized in other zone districts, ...or,...cannot be properly accommodated in the other zone districts,” the proposed SAD rezoning does not meet the purpose and intent to establish an SAD. As further elaborated in **LDR Section 4.4.25(B)(2), SAD required**, *The SAD zone designation is required for the following:*

- (a) Any development which is designated as a Large Scale Mixed Use pursuant to the Comprehensive Plan.*
- (b) Any Development of Regional Impact (DRI).*
- (c) A full service marina.*
- (d) Any use which is otherwise not accommodated in any of the other zone districts.**

None of these categories apply to the proposed 1177 Moderne SAD. The project could best be described as infill multi-family residential, which can be built in eight other City zoning districts.

#### **Considerations**

The Board should consider the following in reviewing the subject request:

- whether the proposal meets the intent of the SAD zoning designation or if the RM zoning designation is more appropriate;
- whether the development standards should include the same Performance Standards applicable to RM zoned, multi-family developments over 6 du/ac;

- whether the proposed height at 48 feet and setbacks without additional upper story setbacks will adversely impact the adjacent properties; and,
- whether sufficient mitigation is provided to minimize impacts on adjacent properties, such as a reduced height specified in the development standards.

### Review By Others

The subject property is not within any overlay or redevelopment area.

The first and second reading dates at City Commission are to be determined. It is noted that after first reading, the site plan requires review and approval by the Site Plan Review and Appearance Board (SPRAB) prior to moving forward for the second reading (adoption) of the subject ordinance.

### Board Action Options

- A. Move a recommendation of **approval** of Ordinance No. 04-21, a privately-initiated request to rezone 1177 George Bush Boulevard from the HHH Building SAD to the 1177 Moderne SAD, finding that the amendment and approval thereof is consistent with the Comprehensive Plan and meets the applicable criteria set forth in the Land Development Regulations.
- B. Move a recommendation of **approval with conditions** of Ordinance No. 04-21, a privately-initiated request to rezone 1177 George Bush Boulevard from the HHH Building SAD to the 1177 Moderne SAD, finding that the amendment and approval thereof is consistent with the Comprehensive Plan and meets the applicable criteria set forth in the Land Development Regulations.
- C. Move a recommendation of **denial** of Ordinance No. 04-21, a privately-initiated request to rezone 1177 George Bush Boulevard from the HHH Building SAD to the 1177 Moderne SAD, finding that the amendment and approval thereof is not consistent with the Comprehensive Plan and does not meet the applicable criteria set forth in the Land Development Regulations.

### D. Continue With Direction.

### Public and Courtesy Notices

X Courtesy Notices are not applicable to this request.

- Beach Property Owners Association

X Public Notice was posted at the property 7 calendar days prior to the meeting.

X Public Notice was mailed to property owners within a 500' radius 10 days prior to the meeting.

N/A Public Notice was mailed to the adjacent property owners 20 days prior to the meeting.

X Public Notice was published in the Sun Sentinel 10 calendar days prior to the meeting.

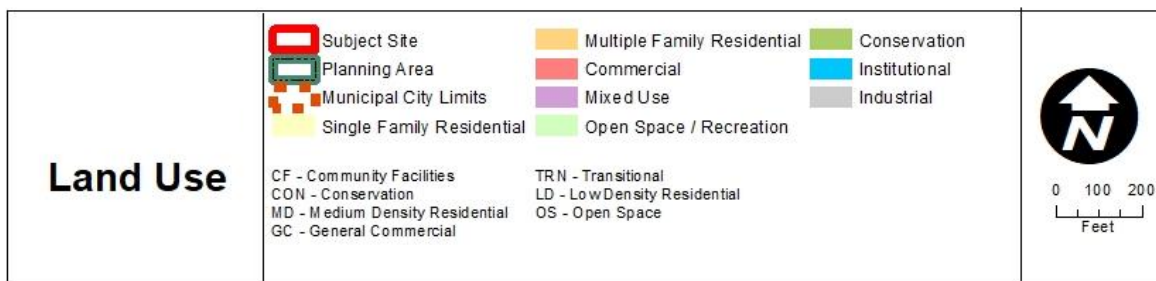
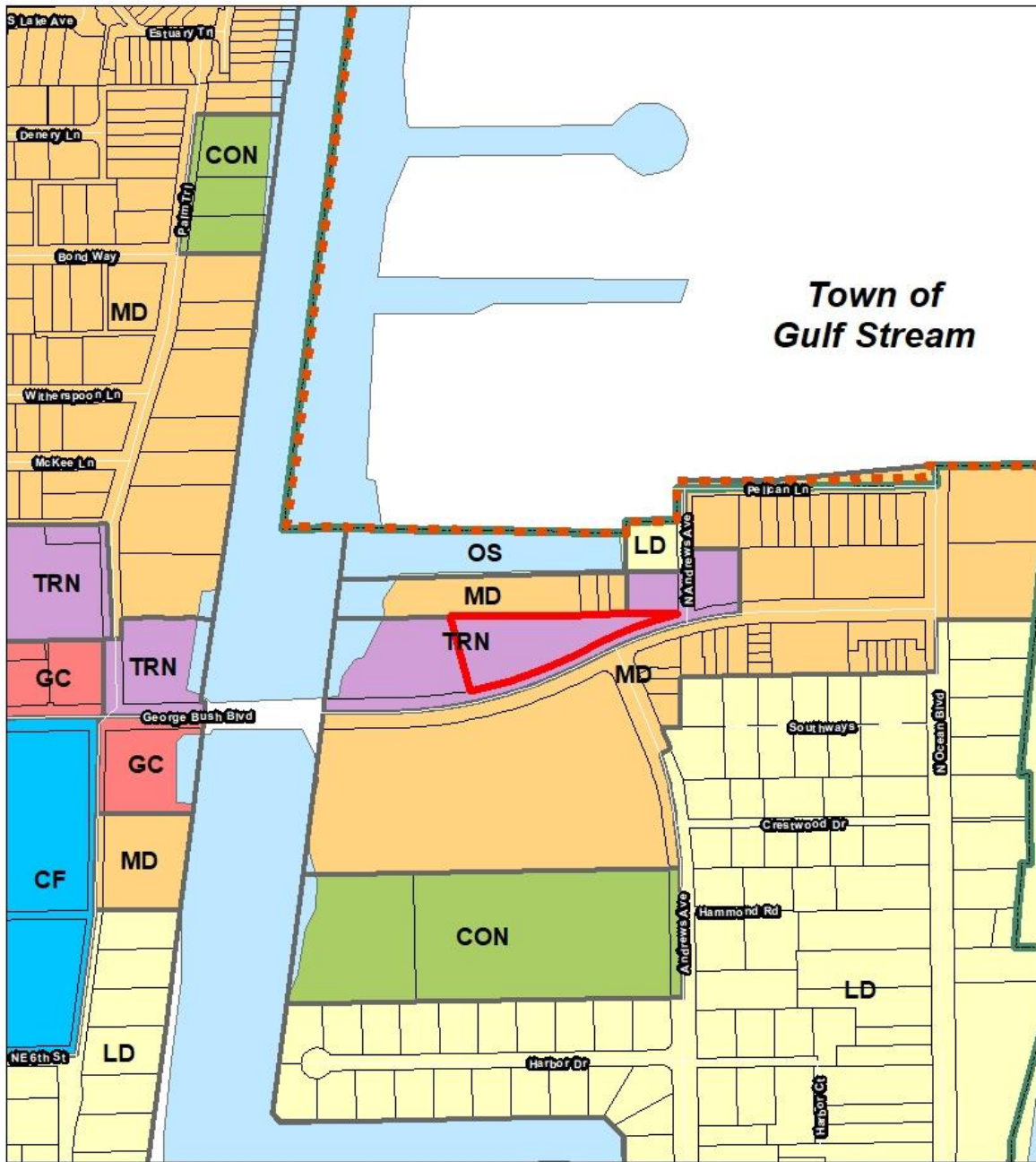
X Public Notice was posted to the City's website 10 calendar days prior to the meeting.

X Public Notice was posted in the main lobby at City Hall 10 working days prior to the meeting.

X Agenda was posted at least 5 working days prior to meeting.



Exhibit "A"  
Land Use | 1177 George Bush Boulevard



Date: 1/15/2021

Document Path: S:\Planning & Zoning\DBMS\GIS\GIS Projects\2021\03\_Map\_Requests\2021\_0107\_1177\_George\_Bush\_Boulevard\01\_Mxd\1177\_FLUM\_Proposed.mxd

Exhibit "B"  
Zoning | 1177 George Bush Boulevard

