

MEMORANDUM

To: City of Boca Raton
Development Services Department

From: Robert A. Eisen, BBA, JD, LL.M
Douglas A. Mummaw, AIA, NCARB

Re: Ordinance No. 5481

Date: April 2, 2019

Ordinance No. 5481: Ordinance No. 5481 deletes the requirement now found at Section 28-1302 (2)(a) Code of Ordinances for a Boca Raton Car Agency site to be fully surrounded by a 6-foot high masonry wall.

Purpose: The purpose of this Memorandum is to provide additional information regarding Ordinance No. 5481. The need for additional information is two-fold. First, a March 25, 2019 article in a local blog states, "If Ordinance No. 5481 is approved, a **protection** that's made Boca special for its current and future residences will be removed." Second, at the March 26, 2019 public hearing on Ordinance No. 5481, City Council requested information on the number of operating Car Agencies in Boca Raton; the appropriate zoning districts for Car Agencies; and, whether the adoption of Ordinance No. 5481 might encourage an proliferation of Car Agencies.

The unrestricted large scale Car Agencies in Delray Beach: On each side of Federal Highway in Delray Beach just north of Boca Raton there have been located since the 1960's a number of large scale (10-15 acres) Car Agencies with extensive outdoor display and storage of cars and extensive 'advertising' such as flags every few feet along Federal Highway.

History of Regulation of Car Agencies in Boca Raton: Prior to June 1, 1965, New Car Agencies were a permitted use in the RB-1 and B-4 Districts. On June 1, 1965, Ordinance No. 975 was enacted. Ordinance No. 975 defined a New Car Agency to include a used car department and enacted special conditions on the construction,

operation and maintenance of Car Agencies including:

- “Areas used for storage of new cars and display of used cars shall be effectually (sic) screened against direct view from a street by a masonry wall, ornamental fence or dense hedge planting no less than six feet high.”
- “No car or cars for sale may be parked or displayed closer than thirty (30) feet to any street property line.
- “New car agencies must provide a building for showroom and offices with a minimum floor area of 4,000 sq. ft.”
- “Garages . . . must be located . . . behind a seventy (70) foot setback from the front property line.”
- Landscaped setbacks on abutting streets were established.

Ordinance No. 975 certainly evinces an emerging Boca Raton land use policy that Boca Raton Car Agencies be more limited and restricted than those existing in Delray Beach, including extensive screening from the roadway frontage. At the time there was extensive vacant property along Federal Highway in north end of the Boca Raton above Jeffrey Street for possible development of unrestricted large scale Car Agencies of the Delray Beach ilk.

In the early 1980’s there were several attempts (none successful) to locate Car Agencies (both small and large scale) in North Boca Raton. In response, on April 28, 1987, the regulation of Car Agencies was revised by the adoption of three ordinances (Nos. 3615, 3616 and 3617) which:

- Changed Car Agencies from permitted uses (subject to the conditions of Ordinance No. 975) in the RB-1 and B-4 Districts to conditional uses in the RB-1, B-4 and C-1 Districts (subject to the conditions now found at Section 28-1302 (2) Code of Ordinance).
- Enacted the conditions on construction, operation and maintenance of Car Agencies now found at Section 28-1302 (2) Code of Ordinances, which generally are:
 - Car Agencies must be located in a totally enclosed building.
 - Car Agency sites must be surrounded on all sides by a 6-foot high masonry wall.
 - No cars shall be displayed or stored outdoors.
 - Site lighting is not to be used as a form of advertising.

- All outdoor paging or speaker systems are expressly prohibited.
- Service facilities must be located in an enclosed building no closer than 70 feet from the front property line.
- No advertising devices other than permitted ground signs.

The trio of Ordinances enacted on April 28, 1987, clearly furthers Boca Raton land use policy that Boca Raton Car Agencies be limited and restricted and fully screened from adjacent roadways and abutting properties. Since 1987, the placement of a Car Agencies requires the lengthy and careful consideration of City Staff, City Boards and the City Council in the conditional approval process.

On December 15, 1992, Ordinance No. 4059 was enacted which created a new Section 28-1302 (3) Code of Ordinances which established as a permitted use in the RB-1 District small scale Car Agencies with:

- No more than six (6) automobiles are displayed in a fully enclosed building in a showroom setting for retail or wholesale sale.
- The fully enclosed showroom, including office areas, does not exceed 5,000 square feet of floor area.
- No mechanical or support services are provided.
- Not closer than one (1) mile from an existing use.

Section 28-1302 (3) Code of Ordinances can be viewed as Boca Raton land use policy favoring small scale Car Agencies, particularly in building with other uses and not freestanding – Car Agencies that are no different than any retail use.

Boca Raton Car Agencies 1965-2019: Despite allowing Car Agencies as either a permitted or conditional use (subject to specific operating conditions), to the knowledge of the authors, no free standing Section 28-1302 (2) Car Agency has ever been approved or put into operation in Boca Raton. To the knowledge of the authors, a small number of Car Agencies under Section 28-1302 (3) have been put into operation in Boca Raton. This apparently is the “**protection**” referenced in the local blog.

The Wall Requirement: Since 1965, a wall requirement, of some sort, has been part of the mix of zoning regulations of Car Agencies in Boca Raton. The City Staff opines that the wall requirement is redundant to the requirements that a Car Agency be located within a totally enclosed building and that no car inventory for sale be displayed or stored outdoors. The City Staff opines that the wall requirement creates a “fortress” appearance. The authors of this Memorandum

fully concur with City Staff in that regard. Regardless of the redundancy of the wall requirement, the blogger questions whether elimination altogether of the wall requirement will change the past 54 years of land use regulation of Car Agencies in Boca Raton of which the blogger approves.

It is impossible to say with certainty whether the wall requirement is the *sine qua non* of Boca Raton Car Agency regulation. The authors think not. In fact, the authors think that the absence of the large scale Delray Beach ilk of Car Agency in Boca Raton is more the result of Delray Beach satisfying the local market (including Boca Raton) need for large scale Car Agencies.

The Request: The request for elimination of the wall requirement altogether was initiated with regard to a small scale Car Agency proposed on a 3.65 acres site containing other uses. Essentially, a slightly larger version of the Car Agency that is permitted under Section 28-1302 (3). Perhaps the best way to address the concern over the loss altogether of the wall requirement is to modify the amendment to read as follows: “Car agency sites in excess of four (4) acres shall be enclosed by a 6 foot high masonry wall, smoothly finished on both sides.” This certainly dovetails with the established Boca Raton zoning policy discussed above that favors the small scale restricted Car Agency.

Car Agencies in Boca Raton: To the best of the authors’ knowledge, there has never been a conditional approval of a Car Agency under Section 28-1302 (2). Doug Mummaw’s reference to 29 Car Agencies operating in Boca Raton was to a report from the Florida Department of Motor Vehicles (“FDMV”) that shows 29 entities licensed by the FDMV to sell cars in Boca Raton. This report has been provided to City Staff. Not every business which has a license from FDMV to sell cars would necessarily have to be a Car Agency for zoning purposes. For example, many of the businesses licensed by FDMV operate solely on the internet with no brick and mortar showroom. The City Staff is in the best position to determine how many Car Agencies are licensed and active in the City.

Zoning Districts: Since 1987, Car Agencies may be conditionally approved in the RB-1; B-4 and C-1 Districts. These Districts generally front on Federal Highway and Dixie Highway. These Districts are appropriate for Car Agencies.

Proliferation: Concern was expressed at the public hearing that a large warehouse could, without the wall requirement, become an undesirable Car Agency. The RB-1 and B-4 Districts do not permit warehouses. Warehouses are permitted in the C-1

District. But any Car Agency in the C-1 District requires conditional use approval. Plus there is very little C-1 District land in the City.

Concern was also expressed at the public hearing whether deletion of the wall requirement would prompt a “boom” of Car Agencies in Boca Raton. The authors submit that the ‘brick and mortar’ Car Agency is a land use dinosaur. The paucity of Car Agencies in Boca Raton is more a function of today’s car sale marketplace than zoning regulation.

Conclusion: The authors appreciate the postponement and the opportunity to more carefully contemplate the consequences of Ordinance No. 5481 and the deletion altogether of the wall requirement. The authors see no compelling reasons not to proceed with Ordinance No. 5481 and delete the wall requirement altogether. However, in an abundance of caution, the authors recommend the amending language read as follows: ““Car agency sites in excess of four (4) acres shall be enclosed by a 6 foot high masonry wall, smoothly finished on both sides.”