



**NORTH MIAMI BOARD OF ADJUSTMENT MEETING AGENDA
776 NORTHEAST 125 STREET, NORTH MIAMI CITY HALL, 2ND FLOOR
WEDNESDAY, MAY 25, 2016, 6:30 PM**

I. ASSEMBLY AND ORGANIZATION:

- A. Call to Order
- B. Pledge of Allegiance
- C. Roll Call of Board Members
- D. Announcement to Audience of the Public Hearing Process

QUASI-JUDICIAL ITEMS: THESE ITEMS MAY EITHER BE APPROVED, DENIED, OR APPROVED WITH CONDITIONS.

PUBLIC HEARINGS: PLEASE BE ADVISED THAT THE FOLLOWING ITEMS ON THE AGENDA ARE QUASI-JUDICIAL IN NATURE. THE APPLICANT OR DULY AUTHORIZED AGENT FOR THE APPLICANT MUST BE PRESENT. IF NO REPRESENTATIVE IS PRESENT, THE APPLICATION WILL BE TABLED TO THE NEXT BOARD OF ADJUSTMENT MEETING. WHEN THE PETITION IS ANNOUNCED, THE APPLICANT OR HIS/HER AGENT SHALL APPROACH THE MICROPHONE AND STATE HIS/HER NAME AND ADDRESS FOR THE RECORD.

ANY INTERESTED PARTY WISHING TO SPEAK ON ANY ITEM MAY APPROACH THE PODIUM AFTER THE BOARD HAS OPENED THE PUBLIC HEARING. EACH PARTY SHALL APPROACH THE MICROPHONE AND STATE HIS/HER NAME AND ADDRESS FOR THE RECORD, AND SHALL ADDRESS HIS/HER COMMENTS TO THE BOARD. EACH PARTY SHALL SPEAK FOR NOT MORE THAN 3 (THREE) MINUTES IN ORDER TO PROVIDE FOR ORDER AND TIME FOR OTHER INTERESTED PARTIES TO ADDRESS THEIR CONCERNS/COMMENTS TO THE BOARD.

- E. Quasi-Judicial Oath
- F. Amendments to the Agenda

II. APPROVAL OF MINUTES: MARCH 16, 2016 BOARD OF ADJUSTMENT MEETING

III. COMMUNICATIONS: BOARD MEMBER COMMUNICATIONS

IV. CONTINUED PETITIONS: NONE

V. NEW PETITIONS:

V-3-16 VALVOLINE INSTANT OIL CHANGE – 1600 NE 123 STREET

A SPECIAL EXCEPTION PURSUANT TO ARTICLE 6, DIVISION 7, SECTION 6-702 OF THE NORTH MIAMI CODE OF ORDINANCES, LAND DEVELOPMENT REGULATIONS ("LDRS") TO TERMINATE THE STATUS OF A NON-CONFORMING AUTO SERVICE STATION IN CONNECTION WITH THE PROPERTY LOCATED AT 1600 NE 123 STREET IN THE C-2BW DISTRICT.

VI. OLD BUSINESS: NONE

VII. NEW BUSINESS: NONE

VIII. ADJOURNMENT:

NOTICE: No stenographic record by a certified court reporter will be made of the foregoing meeting. Accordingly, any person wishing to appeal the recommendations of the Board of Adjustment will need a verbatim record of the meeting's proceedings, which record includes the testimony and evidence upon which the appeal is to be based (Chapter 286.0105 F.S.)

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in this proceeding should contact the Zoning Department no later than four (4) days prior to the proceeding. Telephone (305) 893-6511, ext. 12256 for assistance. If hearing impaired, telephone our TDD line at (305) 893-7936 for assistance.

AS A COURTESY TO THE PEOPLE RECORDING THE MEETING, PLEASE PUT YOUR CELL PHONE ON SILENT.



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KEEPING KIDS FIT

Managing food allergies

BY GARY KLEINER
UHealthSystem.com

Over the past 10 years, research has provided compelling evidence of the increasing problems of food allergies and their damaging effects. Food allergies affect up to 15 million Americans, including 1 in 13 children. Nearly 40 percent of these children have already experienced a severe or life-threatening reaction.

A food allergy is when your body's immune system reacts to a food protein because it has mistaken that food protein as a threat. With a food allergy, your immune system makes too much of an antibody that then fights the threatening food allergens by releasing histamines and other chemicals. The chemical release causes the symptoms of an allergic reaction.

People can be allergic to any food, but eight foods cause most food allergy reactions in the U.S.: milk, eggs, peanuts, tree nuts (such as walnuts and almonds), wheat, soy, fish and shellfish (such as lobster and shrimp). These are all food allergies that can be managed with help from an allergist. Testing for food allergies can be done with a blood test or a skin-prick test.

ARE ALLERGIC REACTIONS SERIOUS?

Yes. Allergic reactions can range from mild to very serious. The most dangerous reaction is anaphylaxis, which happens quickly and may cause death. Anaphylaxis can make it hard to breathe and difficult for your body

to circulate blood. The first line of treatment for anaphylaxis is a medicine called epinephrine. Carefully avoiding problem foods is the only way to prevent allergic reactions.

- Always carry your child's epinephrine auto-injection. Epinephrine is the only medicine that can stop life-threatening reactions.
- Fill out a food allergy and anaphylaxis emergency care plan with your allergist. These plans tell you and those who care for your child how to recognize and respond to an allergic reaction.
- Have your child wear medical identification.

Antihistamines can be used to relieve mild allergy symptoms, but they cannot control anaphylaxis, which should always be treated with an injection of epinephrine. Have your child's pediatrician train you to use the device and practice with a trainer. Make sure caretakers and babysitters know how to use it in the event of an emergency. After using epinephrine, call 911 immediately.

ARE THERE NEW TREATMENTS?

Unfortunately, strict avoidance of the problem foods is still the only way to prevent a reaction. Clinical trials of promising new treatments are underway, including oral immunotherapy and skin patches. Early research has demonstrated that oral immunotherapy is effective in 70 percent to 80 percent of patients.

Gary Kleiner, M.D., Ph.D., is director of pediatric allergy and immunology at UHealth - the University of Miami Health System. For more information, visit UHealthSystem.com/patients/pediatrics.

HOW DO I RECOGNIZE A REACTION?

Work with your child's allergist to know what to look for and how to respond. The first symptoms usually appear between a few minutes to two hours after exposure. Symptoms can be mild, like an itchy nose or a few hives, but they can also be severe, such as troubled breathing, repetitive vomiting, weak pulse, etc. Mild symptoms can quickly turn into a life-threatening reaction.

HOW DO I MANAGE MY CHILD'S FOOD ALLERGY?

Even a trace amount of a problem food can cause a serious reaction. Learn how to find your child's problem food in both obvious and unexpected places.

Read every label, every time. Ingredients in packaged food may change without warning, so check labels every time you shop. Federal law requires packaged food labels to list when one of the top eight food allergens is an intended ingredient. Be mindful of cross contact, which happens when a food that is an allergen safe food and their proteins mix. These amounts are so small that they usually can't be seen.

HOW DO I TREAT AN ALLERGIC REACTION?

No matter how hard you try to avoid food allergens, accidents will happen. A

MINUTES
 NORTH MIAMI BOARD OF ADJUSTMENT
 6:30 P.M.
 WEDNESDAY, MARCH 16, 2016
 COUNCIL CHAMBERS

The meeting was called to order at 6:35 p.m. After the pledge of allegiance, a roll call of the members was taken.

	Name	Present	Excused	Absent
1.	Roseline Philippe <small>Chair</small>	X		
2.	Holly Cohen	X		
3.	Michael McDearmaid	X		
4.	Dotie Joseph	X		
5.	Danna Magloire-Fenelon	X		
6.	Pegy Boulé		X	
7.	Laura Hill <small>Alternate</small>			
8.	Mary Estimé-Irvin <small>Alternate</small>			

Staff was represented by:

Andrew Dixon, Zoning Administrator
 Roland Galdos, Deputy City Attorney
 Brittni Duria, Board Secretary

I. Assembly and Organization – Amendments to the Agenda: None

II. Approval of Minutes:

The minutes of the November board meeting was unanimously approved and a motion was made by board member McDearmaid and seconded by board member Cohen.

III. Board Member Communications:

Board member McDearmaid stated that he was contacted by the applicant and spoke with Councilwoman Keys regarding item V-3-16. Board member Cohen stated that she spoke with the owner for item V-1-16 regarding their proposal.

IV. Continued Petitions: None

V. NEW PETITIONS:

V-1-16 EL KIOSKO LATIN CAFE – 13290 W. DIXIE HIGHWAY

VARIANCE TO ARTICLE 5, DIVISION 1, SECTION 5-103 OF THE NORTH MIAMI CODE OF ORDINANCES, LAND DEVELOPMENT REGULATIONS (“LDRS”) TO ALLOW AN ATTACHED CANOPY TO AN EXISTING BUSINESS LOCATED AT 13290 WEST DIXIE HIGHWAY, IN THE C-1 COMMERCIAL DISTRICT, WITH A SIDE STREET SETBACK OF 4.42 FEET INSTEAD OF THE REQUIRED MINIMUM SETBACK OF 15 FEET AS SET FORTH IN THE LAND DEVELOPMENT REGULATIONS FOR DEVELOPMENTS PERMITTED IN THE C-1 DISTRICT; SAID VARIANCE TO BE REVIEWED UNDER THE CRITERIA SET FORTH IN ARTICLE 3, DIVISION 6, SECTION 3-606 OF THE LDRS.

Board Discussion:

The applicant, Mr. Raudel Balseiro, introduced himself. Mr. Dixon introduced the item, read and summarized the staff recommendations. The Chair then opened the public hearing. After two members of the public spoke, the public hearing was closed. Board member McDearmaid questioned if the parking would support night life of the café. Mr. Dixon stated that yes, they would. For clarification, Mr. Balseiro stated that night life only meant outdoor dining. Board member Joseph asked if there would be live music and he stated that that could be a possibility in the future.

Public Hearing:

Mr. Frank Wolland spoke on behalf of the applicant and expressed his personal opinion in favor of the item. Ms. Annie Montgomery also spoke in favor of the item.

Vote:

The motion for approval was made by board member McDearmaid and seconded by board member Joseph. The item passed unanimously.

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V-2-16 5th AVENUE DEVELOPMENT, LLC – 12121 NE 5TH AVENUE & 509 NE 121ST STREET

- 1. A VARIANCE TO ARTICLE 5, DIVISION 20, SECTION 5-2002(B) OF CHAPTER 29 OF THE CITY OF NORTH MIAMI CODE OF ORDINANCES, LAND DEVELOPMENT REGULATIONS (“LDRS”) TO ALLOW A PROPOSED**

TOWNHOUSE DEVELOPMENT TO SET BACK 13'-3" AND 20'-10" FROM THE EAST AND WEST SIDE PROPERTY LINE, RESPECTIVELY, INSTEAD OF THE MINIMUM 30'-0" REQUIRED IN THE LDRS FOR TOWNHOUSE DEVELOPMENT; AND

- 2. A VARIANCE TO ARTICLE 5, DIVISION 20, SECTION 5-2001(D) OF CHAPTER 29 OF THE CITY OF NORTH MIAMI CODE OF ORDINANCES, LAND DEVELOPMENT REGULATIONS ("LDRS") TO ALLOW SAID DEVELOPMENT WITH TWO (2) TOWNHOUSE ROWS WITH A LENGTH OF EIGHT (8) UNITS AND TWELVE (12) UNITS, RESPECTIVELY, INSTEAD OF THE MAXIMUM LENGTH OF SIX (6) UNITS PER TOWNHOUSE ROW AS REQUIRED IN THE LDRS FOR TOWNHOUSE DEVELOPMENT.**
- 3. A VARIANCE TO ARTICLE 5, DIVISION 14, SECTION 5-1409(B)(1) OF CHAPTER 29 OF THE CITY OF NORTH MIAMI CODE OF ORDINANCES, LAND DEVELOPMENT REGULATIONS ("LDRS") TO ALLOW FORWARD AND REVERSE (BACK-OUT) MOVEMENT FOR A PROPOSED TOWNHOUSE DEVELOPMENT IN A MULTI-FAMILY DISTRICT WHERE SAID MOVEMENT IS ONLY PERMITTED FOR SINGLE-FAMILY RESIDENCES.**

ALL VARIANCES TO BE REVIEWED UNDER THE CRITERIA SET FORTH IN ARTICLE 3, DIVISION 6, SECTION 3-606 OF THE LDRS.

Board Discussion:

The representative for the applicant, Mr. Frank Wolland, introduced himself and the projects partners, Mr. Marcelo Burdowski, Mr. Pascual Korchmar, Mr. Joseph Kaller and Mr. Brian Kelly. Mr. Dixon introduced the item, read and summarized the staff recommendations. Mr. Galdos stated that the Board would procedurally go over each variance one by one to avoid confusion. Mr. Wolland then gave a presentation on the proposed condominium project. Mr. Kaller then gave a brief presentation and explanation of the design.

Public Hearing:

Ms. Shuli Stock, a realtor, spoke in favor of the project and stated her excitement for this upcoming proposal. Ms. Diane Justo, a resident next to the site, spoke in favor of the project but did have a few questions regarding parking. Mr. Wolland clarified that parking would be provided in front of the condominium units as required by code (1.5 spaces per unit). He also stated that parking in swales could be an option but parking should not be a problem. Board member Joseph questioned what the one half space was but staff clarified that it was the value stated in the Land Development Regulations. Mr. Wolland stated that additional parking would be provided with landscaping and reassured the board members that all parking requirements are met. Mr. Galdos then introduced an e-mail sent to staff in opposition of the project. Ms. Duria read the document on the record. Once done, Mr. Galdos responded to the e-mail like if the advertisement was properly addressed.

Mr. Pedro Villanueva, a local resident, stated that the water pressure, parking and crime is an issue in the area, how can they assure the residents that this project would not worsen the current issues. Board member Joseph then asked if the water pressure issue was addressed and Mr. Wolland stated

that it was discussed at the Development Review Committee (DRC) where there are two water pipes serving this project. Mr. Wolland also stated that a traffic study was done on the property before plans were even made, which was the reason for the third variance. Board member Cohen stated that there would be a problem with the variances, one could not happen without the other. She questioned why have zoning when there is an economic issue at hand so address it (more towards the second variance). Board member Joseph asked what was the rationale for the six unit separation. Mr. Wolland mentioned Colonnade Condominiums as an example. That community is two (2) blocks long and at a safety standpoint, it would not make sense for an emergency vehicle to have to go around it rather than through it so the solution would be to break it up. Mr. Dixon added that it was a design standard for movement and circulation. Board member Magloire-Fenelon asked what the rental market range for this project would be. Mr. Wolland stated a three bedroom would be \$2500 and a four bedroom at \$1900. The value is determined through market rate housing. Crime and traffic was addressed and stated that this proposal could stabilize this neighborhood. Board member McDearmaid asked if this would be a green building, Mr. Wolland stated that it would be and meets all City's principles.

Ms. Diane Justo, manager for Windsor Estates, and resident, Mr. Pedro Villanueva, expressed her concern for parking. Ms. Shuli Stock then recommended that they try to attract families and be more dependent on bicycles or be more transit-oriented. Mr. Wolland stated that this was a workable situation where the swale could be used to back out but also clarified that the third variance was for back out and not parking, which is a safe common practice. Board member Magloire-Fenelon asked if the parking spaces have allowance for cars to park behind the other. Mr. Wolland stated that with the use of the swale, yes. Mr. Galdos stated that the back-out requires a variance because the section within our Land Development Regulations only allows such in single-family residential. Board member Magloire-Fenelon stated that she only felt comfortable approving if the parking was addressed. Board member McDearmaid added that it needs to be addressed city-wide because it could affect the city aesthetically.

Vote:

First Variance: The motion for approval was made by board member McDearmaid and seconded by board member Cohen. The item passed unanimously.

Second variance: The motion for approval was made by board member McDearmaid and seconded by the Chair. The item passed unanimously.

Third variance: The motion for approval was made by board member Joseph and seconded by board member McDearmaid. The item passed unanimously.

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V-3-16 VALVOLINE INSTANT OIL CHANGE – 1600 NE 123 STREET

A SPECIAL EXCEPTION USE PURSUANT TO ARTICLE 6, DIVISION 7, SECTION 6-702 OF THE NORTH MIAMI CODE OF ORDINANCES, LAND DEVELOPMENT REGULATIONS (“LDRS”) TO TERMINATE THE NON-CONFORMING USE STATUS

OF AN AUTO SERVICE STATION/MAJOR VEHICLE SERVICE USE IN CONNECTION WITH THE PROPERTY LOCATED AT 1600 NE 123 STREET IN THE C-2BW DISTRICT AND AUTHORIZE A MINOR VEHICLE SERVICE USE INSTEAD.

Board Discussion:

Additional information was handed out to staff and the board members. The Chair introduced the item and Mr. Dixon explained that most of the items within the given package were included in the original packet given to the members beforehand. Board member Joseph made a request to table the item since they did not have sufficient time for review. Mr. Tom Robertson, representative for Valvoline, went over briefly the contents of the new package. The Chair stated that staff's package and the applicant's package were slightly different and time was needed to review the items. Mr. Galdos stated that a special meeting could be made for this item.

Public Hearing:

No public hearing.

Vote:

The motion to table the item was made by board member Joseph and seconded by board member Cohen. The item was tabled based on a unanimous vote.

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The next meeting was tentatively set for April 20, 2016.

VI. COMMITTEE REPORTS: None

VII. OLD BUSINESS: None

VIII. NEW BUSINESS: None

IX. ADJOURNMENT:

The meeting was adjourned at 8:26 p.m. The motion for adjournment was made by board member Cohen and seconded by board member Magloire-Fenelon.

Respectfully submitted:

Attest:

Roseline Philippe, Chairperson
Board of Adjustment

Alex David, AICP, Zoning Administrator
Community Planning & Development

Prepared by:

Brittini Duria, Board Secretary
Community Planning & Development



NOTICE OF PUBLIC HEARING

May 12, 2016

Dear Property Owner:

The City of North Miami has received the following zoning approval request:

V-3-16 VALVOLINE INSTANT OIL CHANGE – 1600 NE 123 STREET

A SPECIAL EXCEPTION PURSUANT TO ARTICLE 6, DIVISION 7, SECTION 6-702 OF THE NORTH MIAMI CODE OF ORDINANCES, LAND DEVELOPMENT REGULATIONS (“LDRS”) TO TERMINATE THE STATUS OF A NON-CONFORMING AUTO SERVICE STATION IN CONNECTION WITH THE PROPERTY LOCATED AT 1600 NE 123 STREET IN THE C-2BW DISTRICT.

The Board of Adjustment will hear this request on **Wednesday, May 25, 2016 at 6:30 p.m.** You are welcome to attend this meeting where you will be given an opportunity to express your support or concerns, if you so choose. **The meeting will be held in the City Council Chambers on the second floor of the City Hall located at 776 Northeast 125 Street.**

The City is mailing notice of this request as a courtesy to the surrounding property owners. No response is necessary on your part. However, if you wish to respond and cannot attend the meeting, you may respond in writing to the Board of Adjustment, c/o Community Planning & Development Department, City of North Miami, 12400 NE 8 Avenue, North Miami, FL 33161. The application documents are available for review upon request in the Community Planning & Development Department.

Sincerely,

Alex David, AICP
Zoning Administrator
Community Planning & Development

12400 NE 8 Avenue | North Miami | Florida | 33161

Telephone 305.895.9825

Fax: 305.895.4074



776 Northeast 125th Street, P.O. Box 610850, North Miami, Florida 33161-0850 (305) 893-6511

To: Honorable Board of Adjustment Members
From: Alex A. David, AICP
Zoning Administrator
Community Planning & Development Department
Date: May 25, 2016
V-3-16 Valvoline Instant Oil Change – 1600 NE 123rd Street

Application Summary

Applicant/Agent: Land South Partners/Thomas H. Robertson, Esq., Bercow Radell & Fernandez
Location: 1600 NE 123rd Street
Land Area: 13.650 sq. ft. (0.313 acres)
Folio Number: 06-2228-001-0591

Petition: A SPECIAL EXCEPTION PURSUANT TO ARTICLE 6, DIVISION 7, SECTION 6-702 OF THE NORTH MIAMI CODE OF ORDINANCES, LAND DEVELOPMENT REGULATIONS (“LDRS”) TO TERMINATE THE STATUS OF A NON-CONFORMING AUTO SERVICE STATION IN CONNECTION WITH THE PROPERTY LOCATED AT 1600 NE 123 STREET IN THE C-2BW DISTRICT.

Project Summary

The project site consists of one (1) parcel: Folio #: 06-2228-001-0591, which totals 13,650 sq. ft. or 0.313 acres, and is located at the southeast corner of NE 123rd Street and NE 16th Avenue. The Applicant, Land South Partners, wishes to construct a Valvoline Instant Oil Change on a brownfield site which previously held a gas station/auto repair/convenience store. The Applicant is in the final stages of remediation (cleanup) of the parcel and is applying for a Special Exception to terminate the non-conforming gas station/auto repair/convenience store use and replace it with a more restrictive nonconforming use (Valvoline).

The City’s Land Development Code, as written, provides allowances for replacing one nonconforming use with another if the proposed use is more restrictive than the first (**Sec. 6-203. Change from one nonconforming use to another nonconforming use.**). The only mechanism for this type of review in place in the Code is through the Special Exception procedures process (**Secs. 3-502. Application. And 3-503. Staff review, report and recommendation.**).

The original structure consisted of a 1,987 sq. ft. building offering auto related and convenience store services. The Valvoline Instant Oil Change proposal includes a 1,595 sq. ft. building with required parking, landscaping and signage.

Pursuant to **Article 7. – Definitions** both the previous and proposed uses are defined as *Automobile Service Station*.

“*Automobile service station* means any building, structure, or lot used for the following: dispensing, selling or offering for retail sale gasoline, kerosene, lubricating oil, or grease for the operation and maintenance of vehicles. This may include buildings or structures that are used for the retail sale and direct delivery to motor vehicles of candy, soft drinks and other related items for the convenience of the motoring public, and may include facilities for hand car washing, lubricating, minor repairs or vehicle service. Such establishments shall not include facilities for major vehicle service.”

Parcel History

The following is a brief synopsis of the history of the property:

- 1) Structure was built in 1962 (per M-D County Property Appraiser);
- 2) Since at least the early 1990’s the structure was utilized as a full service gas station offering automotive repairs and a convenience store;
- 3) On September 26, 2012 the Applicant purchased the mortgage note and mortgage for the property but gas station use was continued;
- 4) In late 2012 the Applicant obtained services for cleanup;
- 5) On January 8, 2013, the City Council approved Resolution R-2013-4 designating the parcel a Brownfield;
- 6) On April 10, 2013, the Applicant filed a Contamination Assessment Plan (CAP) with DERM;
- 7) On June 5, 2013, DERM approved CAP;
- 8) Foreclosure proceedings were initiated in mid-2013 by Applicant;
- 9) On March 14, 2014, Gas station closes;
- 10) On August 5, 2014, Applicant obtains legal title to property (recordation August 13, 2014);
- 11) September 2014 through September 2015, demolition and environmental remediation occurs;
- 12) On March 1, 2016 Applicant submitted application to City to improve the parcel with a more restrictive nonconforming use through the Special Exception procedures.

A more complete Timeline (TAB 2) is provided as an attachment and details the parcel history since the early 1990’s.

Neighborhood Land Use Characteristics

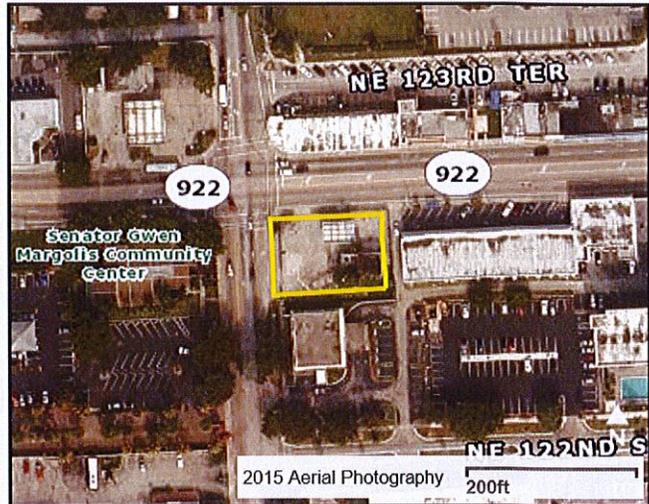
Property	Future Land Use	Existing Zoning	Existing Use/Subdivision
Site	Commercial/Office	C-2BW	Vacant
North	Commercial/Office	C-2BW	Commercial
South	Commercial/Office	C-2BW	Bank
East	Commercial/Office	C-2BW	Commercial
West	Mixed Use Low	PD	Senator Gwen Margolis Community Center

The subject property consists of one parcel, which had been developed with a full service automotive service station and ancillary convenience store. The properties to the north and east feature a variety of

commercial/retail uses, including antique stores, animal hospital and restaurants. A Valero gas station (which is nonconforming) currently exists on the northwest corner of NE 123rd Street and NE 16th Avenue and Senator Gwen Margolis Community Center lies to the west. The following aerial view from the Miami-Dade Property Appraiser's website depicts the subject parcel.

Generated On : 4/15/2016

Property Information	
Folio:	06-2228-001-0591
Property Address:	1600 NE 123 ST North Miami, FL 33181-2701
Owner	LAND SOUTH PARTNERS 1 LLC C/O THOMAS M CLARK
Mailing Address	2400 E COMMERCIAL BLVD STE 820 FT LAUDERDALE, FL 33308 USA
Primary Zone	6201 COMMERCIAL
Primary Land Use	2626 SERVICE STATION : SERVICE STATION - AUTOMOTIVE
Beds / Baths / Half	0 / 0 / 0
Floors	1
Living Units	0
Actual Area	Sq.Ft
Living Area	Sq.Ft
Adjusted Area	1,987 Sq.Ft
Lot Size	13,650 Sq.Ft
Year Built	1962



Taxable Value Information			
	2015	2014	2013
County			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$584,429	\$398,620	\$362,382

Consistency with the City of North Miami Comprehensive Land Use Plan

The property is designated Commercial/Office on the City adopted Future Land Use Map (FLUM). This land use category is intended to provide land area for business, office, retail, service and other commercial enterprises. The proposed use is compatible with this designation in accordance with Policy 1.13.2 of Objective 1.13 of the Future Land Use Element (FLUE) of the City's Comprehensive Plan.

The Applicant's special exception request to terminate the status of a nonconforming auto service station to be replaced with a less intensive auto service use would be allowed under this Land Use designation, if approved. As such, the Applicant's petition for said use is similar to what would be allowed under business uses in the goals, objectives and policies of the Comprehensive Plan for areas designated Commercial/Office in the City.

Compliance with the City of North Miami Land Development Regulations

The subject property is zoned C2BW, Commercial District on the City's Adopted Zoning Map. The purpose of this district is to enhance the high quality of commercial uses in the City. The proposed Valvoline Instant Oil Change is a commercial use and would be permitted, if approved utilizing the Special Exception procedures, as a more restrictive nonconforming use than the previous nonconforming gas station/auto service repair/convenience store.

Analysis

As per Article 6, Division 2, Section 6-201 of the City's Land Development Regulations, the nonconforming use shall be permitted to continue. Generally, per Section 6-202 (A and B), a nonconforming use shall not be enlarged, increased or extended to occupy a greater area of land than was originally occupied; and the use shall not be moved in whole or in part extended to include any other portion of the lot or parcel occupied by such use.

In its analysis, staff has reviewed the following pertinent Sections of the City's Land Development Regulations. Staff has also provided its responses to each Code citation based on the request.

Additionally, and for informational purposes, two Florida District Court of Appeals rulings are relevant to this application. The first is concerning the termination of nonconforming uses if said uses cease operation for a period greater than 180 days. In 2007, the Fla. 2nd District Court of Appeals ruled that a nonconforming use does not cease if the use is discontinued due to environmental cleanup. It is merely considered interrupted (Sarasota County v. Bow Point on the Gulf Condominium Developers).

At its inception the gas station was constructed back in 1962 as legally conforming use at the subject site. However due to changes in the City's zoning code over time, the use was eventually prohibited in that commercial district. Available City records on file (based on the 1991 zoning code) indicate that the use was prohibited, rendering the gas station/auto repair with convenience store nonconforming, although no changes were made to the parcel or structure. Additionally, it is important to note that in 2002, the Fla. 5th DCA ruled that a change solely in ownership does not affect the grandfathered right to the nonconforming use (Hobbs v. Department of Transportation).

ARTICLE 3. - DEVELOPMENT REVIEW
DIVISION 5. - SPECIAL EXCEPTIONS

Sec. 3-502. - Application.

An application for special exception approval shall be made in writing upon an application form approved by the city, accompanied by a site plan and other information required and applicable fees.

STAFF RESPONSE: Staff has reviewed the application and deemed it complete.

Sec. 3-503. - Staff review, report and recommendation.

A. City staff shall review the application in accordance with the provisions of division 2 of this article and this division.

STAFF RESPONSE: Staff has reviewed the application and deemed it complete.

B. Upon completion of review of an application, city staff shall:

1. Provide a report that summarizes the application, including whether the application complies with each of the standards for granting special exception approval in section 3-504.

STAFF RESPONSE: Staff has provided a report summarizing the application. Standards are not relevant to this application.

2. Provide written recommended findings of fact regarding the standards for granting special exception approval.

STAFF RESPONSE: Staff has provided recommended findings. Standards are not relevant to this application.

3. Provide a recommendation as to whether the application should be approved, approved with conditions or denied.

STAFF RESPONSE: Recommendation is provided at end of Staff Report.

4. Provide the report and recommendation, with a copy to the applicant, to the board of adjustment for review.

STAFF RESPONSE: Provided to Applicant and Board prior to Hearing.

5. Provide notice of the hearing before the board of adjustment in accordance with the provisions of article 3, division 3, of these LDRs.

STAFF RESPONSE: Notice provided as follows:

1. Publication Date – May 12, 2016

2. Mailed Notice – May 12, 2016

6. After the board of adjustment hearing and decision, prepare and record a special exception permit and provide the applicant with a copy.

STAFF RESPONSE: To be Completed after Hearing.

ARTICLE 6. - NONCONFORMITIES

DIVISION 1. - GENERAL

Sec. 6-101. - Purpose and applicability.

The purpose of this article is to provide for the continuation, modification or eventual elimination of nonconforming uses, structures and signs in accordance with the standards and conditions in this article. While nonconformities may continue, the provisions of this article are designed to *encourage the improvement* or elimination of nonconformities in order to better achieve the purposes of these LDRs.

DIVISION 2. - NONCONFORMING USES

Sec. 6-201. - Continuation of nonconforming uses.

Except as may be provided elsewhere in this article, a lawful use that is made no longer permissible as of the date of enactment of these LDRs shall be permitted to continue, so long as it remains otherwise lawful and subject to the standards and conditions contained herein.

Sec. 6-202. - Extensions and expansions of nonconforming uses.

- A. A nonconforming use shall not be enlarged, increased or extended to occupy a greater area of land than was occupied as of the date of adoption of these LDRs;

STAFF RESPONSE: Not Applicable.

- B. A nonconforming use shall not be moved in whole or in part or extended to include any other portion of the lot or parcel occupied by such use as of the date of adoption of these LDRs;

STAFF RESPONSE: Not Applicable

- C. Notwithstanding the foregoing, an increase in the level of activity of a nonconforming use in any portion of a building that was arranged or designed for such nonconforming use shall not be considered to be an expansion or extension of a nonconforming use.

STAFF RESPONSE: Not Applicable

Sec. 6-203. - Change from one nonconforming use to another nonconforming use.

A. A nonconforming use may be changed to either a more restrictive nonconforming use or a conforming use.

STAFF RESPONSE: The previous nonconforming gas station/auto repair/convenience store use is proposed to be replaced by an oil change auto service center. This use is a more restrictive and limiting use on the parcel. Any use such as that proposed would require the appropriate environmental permitting and approvals from DERM.

B. When a nonconforming use is changed to a more restrictive nonconforming use, the new nonconforming use shall not be permitted to subsequently change back.

STAFF RESPONSE: As a condition of approval, the current, or any future property owner, through a Declaration of Restrictions or other legal document shall not be permitted in perpetuity to return to a gas station/auto repair/convenience store use.

Sec. 6-204. - Nuisances and hazards prohibited.

A nonconforming use shall not be continued if it produces odors, noxious fumes, smoke, noise or other external impacts that become a nuisance or hazard to residents.

STAFF RESPONSE: The proposed oil change facility will not produce impacts detrimental to or become a hazard to residents. Said use shall be conducted entirely within an enclosed building.

Sec. 6-205. - Discontinuance of nonconforming use.

If a nonconforming use ceases operations for any reason for a period of more than one hundred eighty (180) consecutive days, such nonconforming use shall not thereafter be re-established and any subsequent use of the land shall conform to these LDRs for the district in which it is located.

STAFF RESPONSE: In this case, the nonconforming use has not been ceased if the use is discontinued due to environmental cleanup, and is merely considered interrupted (Sarasota County v. Bow Point on the Gulf Condominium Developers, 2007).

DIVISION 7. - TERMINATION OF STATUS AS A NONCONFORMITY

Sec. 6-701. - General.

A nonconforming use or structure may be deemed to be in conformity with these LDRs, and may thereafter be allowed to continue and to expand as a lawfully existing use or structure, if such use or structure is granted special exception approval in accordance with the provisions of this division and the procedures in article 3.

STAFF RESPONSE: The application has been submitted and reviewed in accordance with **Article 3. - Development Review Division 5. – Special Exceptions, Sections 3-502 and 3-503**. These Sections provide the mechanism to cure this nonconformity by termination of this status.

Sec. 6-702. - Standards for terminating nonconforming status.

Special exception approval shall not be granted to terminate status as a nonconforming use or structure unless the nonconformity is improved in a way that will reduce the impact of the nonconformity on the neighborhood. The impact of the nonconformity can be reduced as follows:

A. Significant upgrading and improvement to the building facades; or

STAFF RESPONSE: The Valvoline Instant Oil Change would be located in a new structure sited to comply with all dimensional requirements and both design and green

building standards contained within **Article 5. – Development Standards Division 8. – Design** (Proposed Site Plan provided).

B. Addition of substantial landscaping to buffer the property; or
STAFF RESPONSE: New landscaping will be added to the parcel (Proposed Landscape Plan provided).

C. Upgrading or improving onsite parking to minimize overflow parking to the extent possible on the property.
STAFF RESPONSE: Adequate parking is provided and sited in order to prevent any overflow parking (Proposed Site Plan provided).

Conclusion

The requested special exception to terminate the status of a nonconforming use and to establish a less intensive nonconforming use (Reference Division 7 and Sec. 6-203) conforms to the goals, objectives and policies of the City's Comprehensive Plan. It is in keeping with the intent and purpose of the City's LDRs, as it is an appropriate use for the area involved and will not be detrimental to the public welfare. In light of these findings, staff recommends that the BOA approve the requested special exception to terminate auto service station use on the subject property, subject to the conditions herein listed and summarized as follows:

1. That a site plan shall be submitted to and meet with the approval of the City's Development Review Committee (DRC) prior to the submittal of an application for a building permit; said plan to include among other things, location of structure(s), the type(s), size(s) and location(s) of sign(s), landscaping materials, off-street-parking areas, lighting fixtures, etc.
2. That the use comply with all applicable requirements of the Division of Environmental and Regulatory Management of the County's Department of Regulatory and Economic Resources, and all other County and State agencies.
3. That the current, or any future property owner, through a Declaration of Restrictions or other legal document shall not be permitted in perpetuity to return to a gas station/auto repair/convenience store use.
4. That a Certificate of Use from the Community Development and Planning Department be only issued upon compliance with all terms and conditions of this approval, the same subject to cancellation upon violation of any of the conditions herein listed.
5. That the proposed oil change facility not produce impacts detrimental to or become a hazard to residents and shall be conducted entirely within an enclosed building.

Public Notification/Comments

In accordance with Subsections (A), (B) and (C) of Article 3, Division 3, Section 3-302 of the City's LDRs, notification of the applicant's request was published on May 12, 2016 in The Miami Herald, posted on the property, and mailed to property owners within a 500-foot radius of the subject property to give them an opportunity to comment on the application if they so desire.

Applicable Code Citations

Article 3, Division 5, Sections 3-502 and 3-503
Article 5, Division 8, Sections 5-804 and 5-805

Article 6, Division 1, Section 6-101
Article 6, Division 2, Sections 6-201 through 6-205
Article 6, Division 7, Sections 6-701 and 6-702

Attachments

Application

Letter of Intent

Addenda to Submittal

 Zoning Verification Letter

 Timeline for 1600 NE 123rd Street

 Section 6-701 & 6-702 North Miami Code

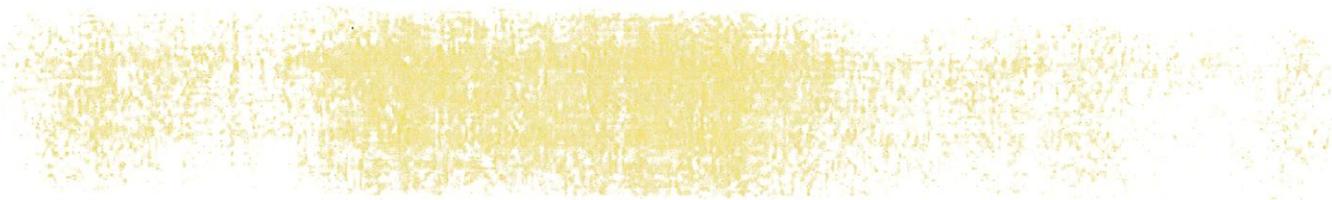
 Site Assessment Report and NFA Proposal

 Sarasota County v. Bow Point on the Gulf Condominium Developers

 Typical Building Photograph

 Landscape Plans

Resolution No. R-2013-4 “Brownfield Designation”



NORTH MIAMI
FLORIDA
COMMUNITY PLANNING & DEVELOPMENT
DEPARTMENT—Zoning

BOARD OF ADJUSTMENT (BOA)

SECTION 1: SUBMITTAL REQUIREMENTS & CHECKLIST

**SECTION 2: BOARD OF ADJUSTMENT (BOA) INFORMATION, FEES &
CONTACTS**

APPLICATION

12400 NE 8 Avenue North Miami, FL 33161

305-893-6511, ext. 12148

www.northmiamifl.gov



Please read the following information on the general requirements and procedures of the Board of Adjustment. **Incomplete applications will not be accepted.** For questions concerning the Board of Adjustment application requirements and procedures, please contact the Department of Zoning at 305-895-9820, Extension 12148. **Unless told otherwise by the Zoning Administrator, all applicants must schedule a meeting with staff to explain their request and go over the application requirements.**

Board of Adjustment Members

The Board of Adjustment consists of current residents of North Miami who have been appointed by a member of the North Miami City Council.

Submittal Dates/Meeting Dates and Times

The Board of Adjustment shall meet on the third (3rd) Wednesday of every other month at 6:30pm in the City Council Chambers in City Hall, which is located at 776 NE 125 Street.

Board of Adjustment Procedure

1. Fill out the "Development Application" which is included in this packet. **Your Petition (Development Application) will not be processed unless your application is complete.** The required attachments are listed on the following page.
 2. The Petition and all attachments must be filed no later than 5:00 pm on the day of the filing deadline in order to be placed on the Board of Adjustment meeting agenda for the following month. You must also pay the filing fee. The deadline dates and applicable fees are listed on the last page of the packet.
 3. You will be contacted to pick up a Public Notice Sign ten (10) days prior to the Board of Adjustment meeting date. The sign must be conspicuously posted on your property one week prior to the meeting and remain posted until final action.
 4. If your Petition is for a Special Exception Use for the Sale of Alcoholic Beverages or for a new business, you must also apply for a certificate of use and business tax receipt if the request is approved.
 5. The Board of Adjustment meetings start at 6:30 pm and are held in the City Council Chambers on the 2nd floor of City Hall, 776 NE 125 Street, North Miami, Florida. The meetings are open to the public. For additional information, call the Department of Community Planning and Development at 305-893-6511, ext. 12148. The department is located at 12400 NE 8 Avenue, North Miami, Florida 33161.
1. You must obtain a building permit from the Department of Building within one year of the date of the variance or special exception use approval. An extension of time may be granted by the Building and Zoning Department for good cause, for a period not to exceed six (6) months for a variance and twelve (12) months for a Special Exception, and only if requested within the original period of validity. **AFTER THE ORIGINAL PERIOD OF VALIDITY, THE APPROVAL BECOMES NULL AND VOID.**

Application Submittal Deadline	Board of Adjustment Hearing
November 12, 2014	December 17, 2014 Jan. 14, 2015
February 18, 2015	March 18, 2015
April 15, 2015	May 20, 2015
June 17, 2015	July 15, 2015
August 19, 2015	September 16, 2015
October 21, 2015	November 18, 2015

December 16, 2015

January 20, 16

Petition to Appear before the Board of Adjustment

A **letter of intent** clearly explaining what it is you propose to do. If a business, include the type and nature of business, the days and hours of operation, the number of employees on the largest shift and the square footage occupied by the business. All other applicants should include any information applicable to the request. All variance requests must include a statement of hardship, or what the hardship is that necessitates the variance request.

All **Variance** requests must include a statement of hardship or what the hardship is that necessitates the variance request. Please state how the request complies with four (4) of six (6) of the following standards (Sec. 3-808):

- Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.
- The unusual circumstances or conditions necessitating the variance request are present in the neighborhood are not unique to the property.
- That the requested variance maintains the basic intent and purpose of the subject regulations, particularly as it affects the stability and appearance of the City.
- The literal interpretation of the provisions of these LDRs would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these LDRs.
- The variance requested is the minimum variance that will make possible the reasonable use of the land, structure or building.
- The granting of the variance will be in harmony with the general intent and purpose of these LDRs and such variance will not be injurious to the area involved.

All **Special Exception** use applications must state how the request complies with the following standards (Sec. 3-504):

- Applications for special exceptions shall demonstrate compliance.
- The use is listed SE (Special Exception) in the district where the property is located.
- There is appropriate provision for access facilities adequate for the estimated traffic from public streets and sidewalks so as to assure the public safety and to avoid traffic congestion.
- There are adequate parking areas and off street truck loading spaces (if applicable) for the anticipated number of occupants, employees, patrons and the layout of the parking is convenient and conducive to safe operation.
- There is suitable landscaping or fencing alongside lot and rear lot lines adjacent to residential uses or residential zoning districts.
- The proposed special exception is reasonable in terms of logical, efficient and economical extension of public services and facilities such as public water, sewers, police and fire protection and transportation.
- The proposed special exception will constitute an appropriate use in the area and will not substantially injure or detract from the use of ah surrounding property or from the character of the neighborhood.

One original, one copy and PDF file of the following (10 copies required if larger than 11" x 17"):

- a current Survey of the property
- Floor Plan indicating how building will be used and square footage
- Site Plan including existing and proposed parking and landscape
- Elevations

A **certified map and two sets of mailing labels** indicating the names and address of property owners within a 500-foot radius of the subject property (for public notice requirements). A list of some of the companies that perform this service are:

Florida Real Estate Decisions	(305)-757-6884	Lopez Data Research	(305)-451-5502
Real Estate Data Researcher	(305)-207-1412	Consuelo Quintana	(305)-858-2287

Applications will not be processed unless all requirements have been submitted by the submittal deadline.

All applications and fees shall be submitted in person between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday

**** Please note that all incomplete applications will be discarded after 60 days from submittal date without notice. ****

1. **Pre-application meeting:** Contact the Community Planning & Development Department at (305) 893-6511, ext. 12171 to schedule a pre-application meeting.
2. **Application Intake:** BOA meetings occur the third Wednesday evening of each month in the Council Chambers (2nd Floor) of City Hall (776 NE 125 Street). New submittals will only be accepted a month prior to the BOA meeting.
3. **Review by DRC members:** The Departments/Divisions shown below review BOA applications.

Publishing/Noticing	\$262.20
Signs (Public Notice)	\$100.00
Special Exception	\$524.40
Variance, Residential	\$262.20
Commercial	\$524.40
Applicant Appeal	\$125.86
Appeal by Aggrieved Party	\$262.20
Continuation of Item	\$125.86

Contact	Phone Number	E-Mail
Nixon Lebrun City Planner	305-893-6511, ext. 12159	nlebrun@northmiamifl.gov
Roland Galdos Interim City Attorney	305-895-9810, ext. 12119	rgaldos@northmiamifl.gov
Britni Duria Sr. Zoning Technician	305-893-6511, ext. 12171	bduria@northmiamifl.gov
Anita Winchester Zoning Clerk	305-893-6511, ext. 12148	aw.wchester@northmiamifl.gov



Board of Adjustment Public Hearing Application

Instructions: Please print or type all information. The application must be filled out accurately and completely.

TYPE OF APPLICATION:

- Special Exception
 Variance
 Appeal by Applicant
 Appeal by Aggrieved Party

PROPERTY OWNER'S INFORMATION:

Owner's Name: Land South Partners 1, LLC
Mailing Address: 4722 Highway 17 Bypass S
City: Myrtle Beach State: SC Zip: 29588
Phone #: _____ E-mail Address: _____

APPLICANT/DULY APPOINTED AGENT INFORMATION:

Contact Name: Thomas Robertson
Company Name: Bercow Radell & Fernandez, PLLC
Mailing Address: 200 S. Biscayne Boulevard, Suite 850
City: Miami State: FL Zip: 33131
Phone: 305-377-6226 E-mail Address: trobertson@brzoninglaw.com

PROJECT INFORMATION:

Project Name: Valvoline Instant Oil Change
Address of Property: 1600 NE 123 Street
Folio Number(s): 06-2228-001-0591

LEGAL DESCRIPTION: (see attached)

PREVIOUS APPROVALS:

Previous approvals (list all previous approvals that substantial compliance/site plan modification/administrative modification is being sought):

Date Approved: _____
Date Approved: _____



OWNERSHIP AFFIDAVIT FOR CORPORATION

**STATE OF FLORIDA
COUNTY OF MIAMI-DADE**

Before me, the undersigned authority, personally appeared Carey E. Graham
_____ hereinafter the Affiant(s), who being first duly sworn by me, on oath, deposes and says:

1. Affiant is the president, vice-president or CEO of the Corporation, or otherwise authorized to sign on behalf of the Corporation, doing business at the following address:
4722 Highway 17 Bypass S, Myrtle Beach, SC 29588
2. The Corporation owns the property which is the subject of this request.
3. The subject property is legally described as:
See the attached.
4. Affiant is legally authorized to file this application or the Affiant has authorized Thomas Robertson, Esq.
_____ as the applicant/duly appointed agent to file this application and to receive all correspondence and represent the Affiant.
5. Affiant understands this affidavit is subject to the penalties of law for perjury and the possibility of voiding of any zoning action granted at public hearing.

WITNESSES:

Barbara J. Graham
Signature

Barbara J. Graham
Print Name

[Signature]
Signature

Janice R. [Signature]
Signature

Print Name

[Signature]
Affiant's Signature

Carey E. Graham
Print Name

Print Name

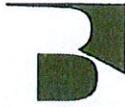
Sworn to and subscribed before me on the 10TH day of December, 2015.

Affiant is personally known to me or has produced Drivers license as identification.

Notary [Signature]

Commission Expires: 12.18.2017





BERCOW RADELL & FERNANDEZ
ZONING, LAND USE AND ENVIRONMENTAL LAW

DIRECT LINE: (305) 377-6226
E-MAIL: trobertson@brzoninglaw.com

VIA HAND DELIVERY

December 16, 2015

Nixon Lebrun, AICP, CFM
City Planner
City of North Miami
Community Planning and Development Department
12400 NE 8th Avenue
North Miami, FL 33161

Re: Letter of Intent for a Special Exception for 1600 NE 123 Street to Terminate
the Status of Non-Conforming Use and Administrative Site Plan Review

Dear Mr. Lebrun:

This law firm represents Land South Partners 1 LLC (the "Applicant"), the owner of the property located at 1600 NE 123 Street in North Miami identified by Folio # 06-2228-001-0591 ("Property"). This letter shall serve as the Applicant's letter of intent in support of a Special Exception to terminate the status of non-conforming use as provided in Sections 6-701 and 6-702 of the Code of North Miami and for Administrative Site Plan Review.

Property. The Property is an approximately 13,650 square foot lot that was once improved with a gasoline and automotive service station. The service station building was approximately 1,987 square feet. The Property is zoned C-2BW. The service station was established on the property in 1962 and was operated continuously until it was closed down for the purpose of conducting an environmental cleanup of the Property. On November 23, 2015 the City issued a Zoning Verification Letter to the Applicant confirming that the Property has rights to a non-conforming use of major automotive service and gasoline.

Project. The Applicant seeks to renovate and redevelop the Property as a Valvoline Instant Oil Change facility. This facility provides oil changes and minor automotive service. This use of the Property, while still non-conforming, is a substantial reduction in the level of service and non-conformance, when compared

to the authorized use. The purpose of this request is to allow the facility to be placed on the property in a more reasonable manner. Under the provision of 6-202 of the City Code, the Applicant would need to confine the new building to the size and location of the previously existing building. This configuration is somewhat small, but more importantly, is very confining in terms of the efficient use of the property. By granting a Special Exception, the Applicant can place the facility on the Property in a much more efficient manner and still comply with the City's other zoning requirements. The current authorized location for the facility is not in compliance with current City zoning rules, such that moving the building will actually result in more compliance with the City zoning code.

Section 6-702 Standards. Section 6-702 of the City Code sets forth standards to be applied when determining whether to grant a termination of status as non-conforming. It provides:

Special exception approval shall not be granted to terminate status as a nonconforming use or structure unless the nonconformity is improved in a way that will reduce the impact of the nonconformity on the neighborhood. The impact of the nonconformity can be reduced as follows:

- A. *Significant upgrading and improvement to the building facades; or*
- B. *Addition of substantial landscaping to buffer the property; or*
- C. *Upgrading or improving onsite parking to minimize overflow parking to the extent possible on the property.*

The proposed Valvoline Instant Oil Change facility will meet each of the requirements set out in this section.¹ The proposed building is substantially upgraded and the building facades will be substantially more attractive and consistent with the area than the authorized use. The Applicant proposes a landscaping plan that is much more extensive than previously on the Property and in compliance with current City requirements. Also, the parking plan as proposed meets current City parking requirements.

Section 6-101, Purpose and Application, provides as follows:

The purpose of this article is to provide for the continuation, modification or eventual elimination of nonconforming uses, structures and signs in accordance with the standards and conditions in this article. While nonconformities may continue, the provisions of this article are designed to encourage the improvement or elimination of nonconformities in order to better achieve the purposes of these LDRs.

¹ It should be noted that the Code only requires meeting one of the three standards. The Valvoline will meet all three.

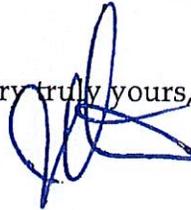
Nixon Lebrun, AICP, CFM
City of North Miami
December 16, 2015
Page 3

This provision recognizes that improvement of a non-conforming use achieves the purposes of the LDRs. The improvements being offered by the Applicant as part of the project are substantial and justify the granting of a Special Exception to terminate the non-conforming status of the Property. The condition of the Property as it relates to its surrounding neighborhood is substantially improved if the project can be done without reference to the prior footprint of the former use. The Special Exception allows the Property to be an asset to the area and provide needed services to the residents of the City.

Business Plan. Attached to this Letter of Intent is the Valvoline Instant Lube Business Plan for this location.

We look forward to your favorable review and recommendation of the proposed Special Exception and the Administrative Site Review. Should you have any questions, comments, or require additional information, please do not hesitate to phone my direct line at (305) 377-6226.

Very truly yours,



Thomas H. Robertson

Enclosures

cc: Carey Graham
Robert Ladas

Table of Contents

1. Zoning Verification Letter
2. Timeline
3. Section 6-701 & 6-702 North Miami Code
4. Site Assessment Report
5. Sarasota County v. Bow Point
6. Building Photograph
7. Landscape Plan



ZONING VERIFICATION LETTER

November 23, 2015

Land South Partner 1, LLC
c/o Thomas Robertson, Esq., Bercow Radell & Fernandez, PLLC
200 S. Biscayne Boulevard, Suite 850
Miami, FL 33131

RE: Address: 1600 NE 123 Street, North Miami, FL 33181
Folio No.: 06-2228-001-0591
Process Number: ZZL00-2015-00084

The Community Planning and Development has acknowledged receipt of your zoning letter request for the above-mentioned property. Following is a summary of our findings:

The subject property is designated Commercial/Office on the City's adopted Future Land Use Map (FLUM). In accordance with Policy 1.13.3 of Objective 1.13 of the Future Land Use Element (FLUE) of the City's Comprehensive Plan, this land use category is intended primarily to provide land area for commercial/office and related uses:

1. Retail uses, including restaurants
2. Office and business uses
3. Professional offices and businesses
4. Community facilities such as schools, museums, places of worship, child and adult care centers, nursing homes, governmental administration, police and fire protection facilities and libraries
5. Passive parks and open space
6. Nonprofit neighborhood social and recreational facilities

The subject property is zoned C-2BW, Commercial District on the City's Adopted Zoning Map and based on our findings, it was developed as an automotive facility which provided major servicing and gasoline. This use was grandfathered in due to its establishment in 1962. This predates the City's Land Development Regulations (LDRs) and is therefore not consistent with the underlying Commercial/Office land use designation of the area and is legally nonconforming.

As per Article 6, Division 2, Section 6-201 of the City's Land Development Regulations (LDRs), the nonconforming use shall be permitted to continue. As per Section 6-202 (A and B), a nonconforming use shall not be enlarged, increased or extended to occupy a greater area of land than was originally occupied; and the use shall not be moved in whole or in part extended to include any other portion of the lot or parcel occupied by such use, which in a way, all increases the nonconformity.



Should you have further questions, please feel free to contact us at 305-893-6511 Ext. 12148 or via email at awinchester@northmiamifl.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andrew Dixon", is written over a vertical line that serves as a signature separator.

Andrew Dixon
Zoning Administrator
Community Planning & Development Department

TIMELINE FOR 1600 NE 123 STREET

Early 1990s	Contamination at the site documented and State performs limited cleanup (See SAR)
April 15, 2009	Consent Agreement for Tank Replacement with Prior Owner
August 24, 2009	Letter to prior Owner for Tank Replacement
October 22, 2009	Email transmitting letter to owner (Second Time)
2010	Soil Contamination documented near tanks by State consultant (From SAR)
May 17, 2010	Notice of Violations for Violating Consent Agreement to Prior Owner
March 1, 2012	DERM Inspection, fuel dispenser out of service due to lack of tank upgrade
July 26, 2012	Amendment to Prior Owner's Consent Agreement RE Timing for Removal of Tanks.
August 31, 2012	DERM inspection. Site operating
September 26, 2012	Land South Purchases note for purpose of redevelopment as Valvoline (Closing Statement)
January 8, 2015	City Resolution Approves Brownfield
March 13, 2013	Brownfield Site Remediation Agreement signed. Land South legally obligated to conduct cleanup
March 28, 2013	DERM inspection. Site operating
April 12, 2013	Land South Contamination Assessment Plan submitted
June 5, 2013	Contamination Assessment Plan approved
June 7, 2013	Prior Owner submits court document admitting he is still operating on site
December 13, 2013	Land South requests extension to start cleanup

January 27, 2014	Prior Owner agrees to move out as of March 14, 2014 in Court Stipulation
March 14, 2014	Prior Owner moves out per agreement
May 28, 2014	Land South seeks extension to start cleanup. Doesn't yet own the property
August 5, 2014	Certificate of Title signed by clerk of court
August 13, 2014	Certificate of Title recorded
September 29 – October 1, 2014	Site Assessment work on site. Samples, soil borings (From SAR)
December 12, 2014	Application for removal of tanks
December 18, 2014	DERM Demolition plan approved
January 26, 2015	Tank Removal permit approved (From SAR)
February 9-18, 2015	Tank Removal. As part of tank removal, significant quantities of contaminated soil is removed and disposed of. (From SAR)
March 30, 2015	City issues Demolition Permit (From SAR)
April 23, 2015	State Tank Closure Report filed
May 13, 2015	Demolition begins. During demolition, over 42 tons of contaminated soil is removed (From SAR)
May 19, 2015	Valvoline discovers zoning is not appropriate (Memo from IBI)
June 11, 2015	Additional soil samples taken. (From SAR)
June 16-17, 2015	Additional Soil removal and additional soil samples and ground water samples (From SAR)
July 15, 2015	Site Assessment Report filed with DERM
August 18, 2015	DERM response to SAR. More work needed.
September 24, 2015	Additional sampling occurs
October 22, 2015	Report to DERM re additional testing

October 26, 2015	Pre-application meeting with City Staff
November 11, 2015	Zoning Verification Submitted
November 13, 2015	DERM response. Additional testing.
November 23, 2015	Zoning Verification Letter approves grandfather status
December 16, 2015	Response to DERM
December 16, 2015	Application for Special Exception and ASPR
January 22, 2016	DERM requests a meeting to discuss final close out strategy.

Sec. 6-701. - General.

A nonconforming use or structure may be deemed to be in conformity with these LDRs, and may thereafter be allowed to continue and to expand as a lawfully existing use or structure, if such use or structure is granted special exception approval in accordance with the provisions of this division and the procedures in article 3.

(Ord. No. 1278, § 1(exh. 1), 4-28-09)

Sec. 6-702. - Standards for terminating nonconforming status.

Special exception approval shall not be granted to terminate status as a nonconforming use or structure unless the nonconformity is improved in a way that will reduce the impact of the nonconformity on the neighborhood. The impact of the nonconformity can be reduced as follows:

- A. Significant upgrading and improvement to the building facades; or
- B. Addition of substantial landscaping to buffer the property; or
- C. Upgrading or improving onsite parking to minimize overflow parking to the extent possible on the property.

(Ord. No. 1278, § 1(exh. 1), 4-28-09)



SITE ASSESSMENT REPORT and NFA PROPOSAL

1600 NE 123rd Street

North Miami, Florida

Brownfield Area ID No.: BF131301000

Brownfield Site ID No.: BF131301001

Prepared for

Land South Partners I, LLC

July 15, 2015

Prepared by

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TABLE OF CONTENTS

	<u>Page</u>
1. INTRODUCTION & BACKGROUND	1
1.1 Site Description.....	1
1.2 Potable Well Survey.....	2
2. SUMMARY OF HISTORICAL SITE REHABILITATION ACTIVITIES	3
2.1 Summary of Site Geology and Hydrogeology	4
3. REDEVELOPMENT AND CURRENT SITE REHABILITATION ACTIVITIES.....	5
3.1 Pre-Demolition Investigation and Monitoring Well Abandonment	5
3.2 Excavation and Removal of USTs	6
3.3 Building Demolition and Soil Excavation	7
3.4 Post-Demolition Soil Assessment and Excavation.....	7
3.5 Post-Excavation Groundwater Sampling	9
4. CONCLUSIONS & NO FURTHER ACTION PROPOSAL	10
4.1 Soil.....	10
4.2 Groundwater	10
4.3 No Further Action Proposal.....	11
5. REFERENCES	12

TABLES

1. Groundwater Elevation Data
2. Groundwater Analytical Data – VOCs and Metals
3. Groundwater Analytical Data –PAHs and TRPH
4. Soil OVA Data Summary
5. Soil Analytical Summary – VOAs, TRPH, and Metals
6. Soil Analytical Summary – Non-Carcinogenic PAHs
7. Soil Analytical Summary – Carcinogenic PAHs

FIGURES

1. Site Topographic Map
2. Site Map
3. Soil Boring Map – September 2014
4. Groundwater Elevation Contour Map – September 2014
5. Soil Excavation Areas – February 2015
6. Soil Excavation Areas – May 2015
7. Soil Boring Locations – June 2015
8. Soil Excavation Areas – June 2015
9. Post Excavation Monitoring Well Locations

APPENDICES

- A. Potable Well Survey
- B. Laboratory Analytical Reports
- C. Well Abandonment Reports
- D. Disposal Manifests – Tank Cleanout Water
- E. Disposal Records - USTs
- F. FDEP Tank Closure Forms
- G. Soil Disposal Manifests & Weight Tickets
- H. Stone and Clean Fill Delivery Tickets
- I. Benzo(a)pyrene Equivalent Calculations

1. INTRODUCTION & BACKGROUND

On behalf of Land South Partners I, LLC (Land South), the person responsible for Brownfield site rehabilitation (PRFBSR), Progressive Engineering & Construction, Inc. (Progressive) prepared this Site Assessment Report to summarize the interim source removal (ISR) activities and completion of the site assessment for the Land South Partners I, LLC Brownfield Site, a former gasoline service station (Corbo Oil) located at 1600 NE 123rd Street, North Miami, FL (Site). The ISR activities included removal and disposal of underground storage tanks (UST); excavation, disposal, and backfilling of impacted soil; post-excavation confirmation soil sampling; and post ISR groundwater sampling.

On January 8, 2013, the City of North Miami Council (City) approved the resolution to designate the property as the Land South Brownfield Area BF131301000. On March 13, 2013, a Brownfield Site Rehabilitation Agreement (BSRA, BF131301001) was executed between Land South and the Miami-Dade County Department of Regulatory and Economic Resources (MDCDRER).

A Closure Work Plan was submitted to MDCDRER on August 10, 2013 in accordance with the BSRA. MDCDRER approved the work plan on June 5, 2013. This report summarizes initial groundwater sampling and subsequent well abandonment activities performed prior to UST removal activities; soil boring information and sample data collected prior to UST removal activities; UST removal activities; soil screening and impacted soil removal information; laboratory reports for groundwater and soil samples collected during closure activities; and conclusions with a No Further Action proposal.

1.1 Site Description

The Site is located in the southeast section of Miami-Dade County in North Miami, Florida. It is zoned C2BW (Commercial) with a land use designation of Commercial. The Site is bound by major roads to the north and west. Surrounding parcels include retail businesses and a bank. Potable water and sewer service for the Site are provided by the City of North Miami, and electricity is provided by Florida Power & Light (FPL).

The approximately 0.31-acre property is identified as Miami-Dade County Folio ID: 06-2228-001-0591. Until April 2015, the Site was occupied by a gasoline service station (Facility ID: 8505541), which had been vacant since 2010. Historical records indicate the property was first developed in 1962. Underground Storage Tanks (USTs) were first reported on the property in 1972. Mobil Oil Corporation (Mobil) acquired the property prior to 1974 (earliest electronic records available on the Miami-Dade property appraiser website). Mobil sold the property to Corbo Oil in 1991, including documentation indicating a release of gasoline had occurred on the property prior to sale.

Figure 1 is a Topographic Map showing the location of the Site. Figure 2 is a Site Map, illustrating the historical property boundary and site features. The Site was comprised of a 1,987-square foot building housing the former convenience store and two repair

garages, and a detached 890-square foot canopy, both of which were removed in May 2015. The fuel dispensing equipment and three fiberglass tanks: one 10,000-gallon unleaded gasoline UST, one 8,000-gallon unleaded gasoline UST, and one 6,000-gallon unleaded gasoline UST were removed in February 2015. In addition, one 1,000 gallon waste oil UST was also removed in February 2015. The USTs had been in place since 1983 (8,000 and 6,000-gallon USTs), 1990 (10,000-gallon UST), and 1972 (waste oil tank). A Tank Closure Report summarizing removal activities and including disposal documentation was submitted to MDCDRER on April 23, 2015. The oil water separator located in the southeast corner behind the building was also removed in February 2015.

1.2 Potable Well Survey

A potable well survey was completed by the Florida Department of Health, Bureau of Environmental Health on June 3, 2014 for the subject Site. The report indicates there are no large public supply wells within ½ mile of the Site, nor any small potable wells within ¼ mile of the Site. A copy of the report is included in this report as Appendix A.

2. SUMMARY OF HISTORICAL SITE REHABILITATION ACTIVITIES

The Site originally reported a discharge in March 1988 in response to petroleum contamination discovered in compliance monitoring wells in place around the tanks. In 1989, the discharge was granted partial eligibility in the EDI program based upon the determination that there had also been a discharge from an oil/water separator (not eligible) at the Site. Additional soil borings were installed between 1988 and 1990. Screening and laboratory data indicated impacted soil was present throughout the property at concentrations above the Chapter 62-777, Florida Administrative Code (F.A.C) Soil Cleanup Target Levels (SCTLs) for benzene, toluene, ethylbenzene, and total xylenes (BTEX). An interim source removal was completed in January 1990 in which 34.67 tons of contaminated soil was removed from the area around the oil/water separator and incinerated at Resource Recovery of America (Cherokee, 1990a). Tank and line leak testing reportedly indicated that the product delivery systems were tight; therefore, the location of the release that caused the groundwater contamination was never definitively identified.

Monitoring wells were installed on the property as tank compliance wells (MW-1 through MW-4) and to assess groundwater quality in 1988 and 1990 (MW-5 through MW-8). Off-site monitoring wells MW-9 through MW-13 were also installed in 1990. A Contamination Assessment Report (CAR) and CAR Addendum were prepared for the property in 1990 by Cherokee Groundwater Consultants, Inc. Data submitted in the CAR and CAR Addendum summarized the extent of soil and groundwater impacts. Monitoring wells MW-4, MW-5, and DW-1 (the 35-ft deep well) were analyzed for a full suite of volatile organic compounds (VOCs) to identify the contaminants of concern. Only benzene, ethyl benzene, toluene, xylenes, and methyl-tert-butyl ether (MTBE) were reported at concentrations exceeding cleanup standards.

Significant groundwater impacts were reported in the 1990 investigations (almost 1,000 ug/L of benzene in MW-4, over 2,500 ug/L of toluene in MW-1, over 6,500 ug/L ethyl benzene and over 27,000 ug/L xylenes in MW-10), but free-phase product was not encountered. In addition, one of the deep wells, DW-1 (screened from 30-35 feet below land surface [ft bls]), was contaminated as well. The second deep well, DW-2 (screened to 50 ft bls), was found to be free of petroleum impacts. Cherokee (1990b) estimated that the maximum radius of the plume was 90 ft being delineated by MW-09, MW-11, MW-12, and MW-13 (Figure 2). Seven soil borings were used to delineate vapor impacts in soils.

Installation dates for monitoring wells MW-14 through MW-16 cannot be specifically identified; however, timeframes in available records show these wells were installed between November 1991 and October 1992. Monitoring wells MW-17 and MW-18 were installed on September 16, 1993. Installation dates for monitoring wells MW-19 and MW-20 are estimated to have been between July and October 1994.

Based on the CAR results, a Remedial Action Plan (RAP) was prepared that included pump and treat groundwater recovery and soil vapor extraction (SVE) systems. The RAP was approved and implemented in 1992. Due to difficulties encountered with

mounding in the infiltration gallery and recovery well problems, several modifications were implemented including use of an exfiltration gallery for disposal of treated groundwater. Final modifications to the RAP were approved in March 1993. The remedial system reportedly operated from August 1993 through February 1994. Post-active remediation monitoring was performed until April 1995. No further cleanup records were available in OCULUS.

There is a gap in the records between 1995 and 2006 when the facility was inspected. The facility continued to operate and alternated between being in compliance to out of compliance several times over the period of 2006 to 2010 for failure to perform tightness testing, keep registration updated, and/or provide evidence of financial assurance. At that point in time the tanks had not met the deadline of December 31, 2009, to be upgraded to double walled containment systems so a Consent Order was issued by FDEP requiring tank replacement on April 20, 2010.

In preparation for performing UST upgrades and a Limited Source Removal in 2010, Properties Environmental Assessment and Remediation, Inc. (PEAR) advanced two soil borings for soil screening with an Organic Vapor Analyzer (OVA). One soil sample was also collected for laboratory analysis. The borings were advanced to assess soil impacts. Sample and OVA data indicated soil was impacted in the vadose zone above the Chapter 62-777, F.A.C. Default Leachability-based Soil Cleanup Target Limits (SCTLs), but not above the respective residential or Commercial/Industrial Direct Exposure SCTLs. PEAR estimated 524 tons of impacted soil existed in the vicinity of the USTs (PEAR, 2010). A work order was issued to PEAR (FDEP contractor under the LSSI program) in February 2010 for performance of the limited soil source removal, however, it was never implemented and the work order was subsequently canceled. The USTs were taken out of service and documented in a March 1, 2012 inspection report. The Consent Order was closed on July 5, 2012.

2.1 Summary of Site Geology and Hydrogeology

The unconfined surficial aquifer in Miami-Dade County is the Biscayne Aquifer, which is the principal drinking water aquifer in the area. It consists primarily of highly permeable Pleistocene limestone, sandstones, and sand extending to depths of at least 50 feet below land surface (ft bls) in southern Miami-Dade County and to greater depths in the northern part of the county (Bradner et al., 2005). Cherokee (1990a) estimated that the thickness of the Biscayne Aquifer in the area of the Site was approximately 120 feet. Figure 3 in Bradner et al. (2005) suggests that the base of the Biscayne Aquifer in the vicinity of the Site may be close to 160 ft bls. In some areas, thin layers of peat and sand overlie the aquifer. The stratigraphic units that comprise the shallow Biscayne Aquifer are the Pamlico Sand (quartz sands) and the Miami Oolite (sandy, oolitic limestone).

Based on boring logs from the CAR (Cherokee, 1990a), the surficial geology from 0 to about 14 ft bls is comprised of predominantly fine to medium sands, oolitic limestone gravels, and underlying sandy oolitic limestone. The groundwater table was observed to be at about 4 to 6 ft bls. Local groundwater flow was generally toward the north/northeast,

and surface water runoff was to storm drains located on the property. The hydraulic gradient reported was 0.0004 ft/ft and the average hydraulic conductivity based upon slug tests performed in three monitoring wells was reported to be 8.6 feet per day (ft/day) (Cherokee, 1990b). Using an estimated saturated aquifer thickness of 110 ft, the calculated transmissivity was 7,100 gallons per day per foot (gal/day/ft) (Cherokee, 1990b).

3. REDEVELOPMENT AND CURRENT SITE REHABILITATION ACTIVITIES

The following sections summarize pre-construction field sampling activities, soil excavation, and UST removal activities.

3.1 Pre-Demolition Investigation and Monitoring Well Abandonment

September 29 through October 1, 2014, Progressive collected groundwater samples from all on-site and off-site monitoring wells that could be located, as well as oversaw the advancing of seven (7) soil borings to the top of the water table, which was encountered at 5-7 feet below land surface (ft bls) (Table 1). Soil boring locations are depicted on Figure 3. Soil samples were collected from soil borings for screening with a Photoionization Detector (PID) and dry soil samples were collected for laboratory analysis from locations with the highest measurements.

All groundwater and soil samples were submitted to Southern Research Laboratory, Inc. (SRL) in Orlando, Florida, for analysis. Groundwater samples were analyzed for the presence of Volatile Organic Constituents (VOCs), Semi-volatile Organic Constituents (SVOCs), and Total Recoverable Petroleum Hydrocarbons (TRPH). Samples collected from monitoring wells MW-8 and DW-2 were analyzed for ethylene dibromide (EDB) and lead. Groundwater analytical data are summarized in Tables 2 and 3. Soil samples were analyzed for VOCs, SVOCs, TRPH, arsenic, barium, cadmium, chromium, lead, selenium, silver, and mercury. Toxicity characteristic leaching procedure (TCLP) for lead was performed on samples collected at soil borings SB-2 and SB-3. Soil screening and laboratory data are summarized in Tables 4 through 7. Laboratory analytical reports are included in Appendix B.

Data indicate that groundwater was not impacted by petroleum constituents in any monitoring wells on-site or off-site, with the exception of very low levels of isopropyl benzene and a few other butylated/propylated benzene compounds in MW-5, a low estimated level of MTBE in DW-2, and a low estimated value of trans-1,2-dichloroethene in DW-1. None of these values exceeded any health-based cleanup target level and none of these compounds were detected in any of the soil samples. Soil in several areas of the Site was impacted by arsenic above the residential SCTL; however, the PRFBSR intended to pursue conditional closure to Commercial/Industrial SCTLs. TRPH was above the Commercial/Industrial and Leachability SCTLs in soils near the oil/water separator and the former exfiltration gallery. Soil in the vicinity of the on-site oil/water separator was also impacted by lead and PAHs above industrial cleanup criteria.

Groundwater elevation and analytical data are summarized in Tables 1 through 3. The groundwater elevation contour map is presented as Figure 4. Groundwater flows generally north-northeast. On December 17, 2014, Progressive oversaw Earth Tech Drilling, a Florida Licensed Well Contractor, abandon fourteen (14) monitoring wells, five (5) groundwater recovery wells, and five (5) vapor recovery wells in accordance with water management district requirements. These wells were abandoned to ensure that no conduit for potential contaminant migration from impacted soil encountered during excavation activities would be created. The Well Abandonment Report is included in Appendix C. Monitoring wells MW-9, MW-10, MW-11, MW-12, and MW-17 remained intact for use during groundwater investigation activities.

3.2 Excavation and Removal of USTs

A UST removal permit was acquired on January 26, 2015 by Precision Petroleum, Inc. (Precision), the tank removal contractor subcontracted by Land South. Progressive mobilized to the Site on February 9, 2015 to oversee removal of the USTs, dispenser piping and associated appurtenances, and the oil/water separator that was still present by the exterior southwest corner of the on-site building. Tanks and piping and the oil/water separator were cleaned out by Cliff Berry Environmental, Inc. Water disposal manifests are included in Appendix D. Metal structures were recycled, and USTs and fiberglass piping were placed in roll-off dumpsters for disposal. Tank disposal documents are included in Appendix E. The FDEP UST Installation and Removal Form for Certified Contractors is included in Appendix F.

In conjunction with UST removal activities, Progressive performed soil screening activities to segregate potentially petroleum-impacted soil for disposal off-site. Figure 5 depicts the screening grid used during UST removal and soil excavation activities. Screening was performed in a 5x5x2 foot grid throughout each area. Figure 5 also depicts the extent of excavation in the UST area. Upon achieving PID measurements of less than 10 parts per million (ppm), Progressive collected confirmatory soil samples from the sidewalls of the tank pit excavation, below the dispenser islands, the sidewalls of the waste oil tank pit, and near the former oil/water separator.

Soil samples from the oil/water separator waste oil tank were submitted to SRL for VOC, SVOC (full suite), PCB, total recoverable hydrocarbon (TRPH), and select RCRA metals (arsenic, cadmium, chromium and lead) analyses by EPA Methods 8260B, 8270C-SIM, 8082A, FLPRO, and 6010, respectively. The soil samples collected from the former tank pit and dispenser island areas were analyzed for VOCs, PAHs, TRPH, and select RCRA metals by EPA Methods 8260B, 8270C, FLPRO and 6010, respectively. Soil samples from the bottom of the excavations were not collected at the time of tank closure activities because groundwater was present in the tank pit.

The soil data are summarized in Tables 4 through 7, and lab reports are included in Appendix B. Precision performed mechanical soil excavation and coordinated off-site disposal via dump truck to Clean Earth of Southern Florida, located in Moore Haven, FL. No soil was excavated from the waste oil tank area or exfiltration gallery in February 2015 because the building was still present and it was anticipated that some

soils from under the foundation might need to be removed. Therefore, these areas were scheduled to be excavated after the demolition of the building was completed. Upon completion of UST and soil excavation activities, Precision coordinated the return of clean fill soil and performed backfill and compaction activities. Soil disposal manifests are included in Appendix G. Clean fill and #57 stone drop tickets are included in Appendix H.

3.3 Building Demolition and Soil Excavation

Prior to demolition and redevelopment, a chain link perimeter fence was installed around the work zone on November 6, 2014. A demolition permit was applied for by Consensus Construction (Consensus), the overall general contractor for the construction activities, on December 11, 2014.

The building permit to demolish the building was issued by the City of North Miami on March 30, 2015. Upon receipt of the permit, a notice of commencement was filed with the Dade County court recorder. Demolition began on May 13, 2015. During demolition activities, a hydraulic lift located in the western garage bay was removed. Hydraulic fluid was not present in the lift, and it is assumed any fluids were removed at an earlier date by the previous owner. Upon removal of the building slab, additional soil screening was performed.

Laboratory data from February 2015 indicated elevated concentrations of benzo(a)pyrene, TRPH, and lead existed in soil in the vicinity of the former oil/water separator. Therefore, an additional 42.67 tons of soil was removed from this area during the demolition event, as access to the soil was now available. Because non-volatile petroleum constituents (PAHs and TRPH) were the constituents of concern, field vapor screening was not a reliable indicator of the extent of impacted soil. Therefore, an estimated volume of soil was removed and confirmation samples were collected. Soil samples for laboratory analysis were collected from this area and near the hydraulic lift. Laboratory reports from this event are included in Appendix B. Soil screening and analytical data from the May 2015 excavation event are reported on Tables 4 through 7.

3.4 Post-Demolition Soil Assessment and Excavation

Following the May 2015 demolition and soil excavation, the PRFBSR, Land South, decided to perform sufficient data collection to support closure without conditions rather than achieve conditional closure (through the use of institutional controls by restricting the property to Commercial/Industrial land use only). Soils with arsenic above the residential SCTL were located at SB-2, SB-3, SB-4, SB-7, and the Separator. Soil data also indicated that a few small areas of soil exceeded the Commercial/Industrial SCTLs for benzo(a)pyrene and the residential SCTL for arsenic after the soil removals were completed in February and May 2015. Samples from SB-2, SB-3, UST-S, and the Separator exceeded the Commercial/Industrial SCTL for benzo(a)pyrene; and soils from SB-7 and Dispenser W exceeded the residential SCTL. All other soil samples were below the residential SCTL for benzo(a)pyrene. Copies of the spreadsheets calculating the benzo(a)pyrene equivalents for these samples are included in Appendix I.

Soils were excavated to remove arsenic and benzo(a)pyrene at SB-2, SB-3, SB-4, and the Separator with the initial removal in February 2015 or subsequently in May 2015. After the excavations were completed in May 2015, a soil sample collected on the west wall of the separator excavation (Separator-W) and the Gallery-1 sample located on the west side of the former exfiltration gallery reported arsenic above the residential SCTL; and in the case of Separator-W sample, it exceeded the Commercial/Industrial SCTL as well. The May 2015 excavation area is depicted on Figure 6.

To delineate each small area, additional soil sampling was performed on June 11, 2015. Soil samples were collected from soil borings depicted on Figure 7. Samples were collected at the same intervals where exceedances were observed in previous sampling activities. Data are summarized in Tables 4 through 7 and laboratory reports are included in Appendix B. Using data from the June 11, 2015 sampling event, additional limited volumes of soil were excavated on June 16-17, 2015 from several areas to meet residential SCTLs for arsenic and benzo(a)pyrene. These limited areas included the former dispenser pump area, the exfiltration gallery and waste oil tank area, and the northwest corner of the Site near a former stormwater drain. The final soil removal was completed June 16-17, 2015, and included excavation and off-site disposal of an additional 23.17 tons of impacted soils. These were transported to Clean Earth and properly disposed of on June 17, 2015. Documentation of the disposal of these soils is included in Appendix G.

Two confirmatory soil samples were collected during the June 2015 excavation event from the vicinity of SB-7 and the southern UST excavation limit. Data are summarized in Tables 4 through 7, and the laboratory analytical report is included in Appendix B. Sample locations and excavation areas are depicted on Figure 8. The additional confirmation soil samples were collected from depths corresponding to the depths at which soils exceeded the SCTLs prior to excavation, and were shipped to SRL for analysis of arsenic and PAHs, as appropriate, on June 16, 2015.

Results of the additional confirmation sampling were received on June 26, 2015, and indicate that excavation along the southern extent of the UST area has achieved cleanup goals, however, benzo(a)pyrene exceeded both residential and industrial SCTLs in the confirmation sample (SS-N-2') collected from the southern wall of the excavation area in the northwest corner of the site (near SB-7). Historically, no on-site petroleum dispensing or waste oil handling was performed in this area and this area was not previously identified as being contiguous with the petroleum impacts in the tank pit or dispensing system. Thus, the benzo(a)pyrene present in shallow soil may be a result of impacted fill or runoff from paved areas into the former stormwater system.

In summary, all soils have been excavated and removed from the Site that exceeded residential direct exposure and/or leachability SCTLs with the exception of a small area near SB-17 (Figure 7), where one post-excavation confirmation sample SS-N-2' (Figure 8) exceeded the Commercial/Industrial SCTL for benzo(a)pyrene. The extent of benzo(a)pyrene in remaining soils around this excavation is delineated and the impacted soil is located 2 ft bls. There is no exposure pathway to the impacted soil and

future redevelopment will result in additional soil being placed over the current land surface, such that there will be more than 2 ft of clean fill over this location when redevelopment is completed.

3.5 Post-Excavation Groundwater Sampling

On June 16, 2015, Progressive oversaw the installation of three temporary monitoring wells in locations depicted on Figure 9. Locations were determined based on the locations of the former USTs (fuel and waste oil) and dispensers, as well as groundwater gradient. Wells were constructed of 2-inch diameter, Schedule 40 PVC solid casing from 0-2 ft bls, threaded to 2-inch diameter, Schedule 40, 0.010" slot screen from 2-12 ft bls. Wells were installed by Earth Tech Drilling.

On June 17, 2015, Progressive collected groundwater samples from the three newly installed temporary monitoring wells (MW-21, MW-22, and MW-23). Samples were submitted to SRL for analysis of VOCs, PAHs, TRPH, RCRA metals, and PCBs. Laboratory reports are included in Appendix B, and data are summarized in Tables 2 and 3.

Only a few low level or estimated values/detections of VOCs were reported in any of the groundwater samples collected prior to the Interim Source Removal (ISR) as summarized in Section 3.1. In the post-ISR groundwater samples, two of the three new temporary wells reported no VOCs to be detected, but low concentrations of a few VOCs were reported in the sample collected from MW-21, near the northeast corner of the property, as follows:

- Sec-butylbenzene and n-propylbenzene were reported at 5.0 and 16 ug/L, respectively, in the groundwater sample collected from MW-21. Neither of these compounds has a default GCTL under Chapter 62-777, F.A.C., but both have calculated GCTLs under Miami-Dade Code Sec. 24-44(2)(f)(v)1. The GCTL for both of these compounds under that code is 280 ug/L. Thus, the concentrations detected are well below the GCTLs for these compounds.
- Chlorobenzene was reported at an estimated value of 0.4 ug/L (I flag) between the practical quantitation limit (PQL) and the Method Detection Limit (MDL) in MW-21. This value is also well below the GCTL for chlorobenzene of 100 ug/L.
- The only other VOC detected in MW-21 was isopropyl benzene, which was reported at 0.9 I ug/L, just over the Chapter 62-777, F.A.C. GCTL based upon organoleptic criteria of 0.8 ug/L, but significantly less than the health-based criteria of 700 ug/L. Therefore, pursuant to Rule 780.680(1)(c)1.a., F.A.C., the brownfield site criteria are met confirming that no groundwater contamination is present.

4. CONCLUSIONS & NO FURTHER ACTION PROPOSAL

Based upon the soil and groundwater data described above, Progressive offers the following conclusions and requests approval of No Further Action (NFA) with conditions for this Site. Site redevelopment activities are planned to commence in the very short-term and we appreciate the MDCDRER's prompt review/approval of this NFA proposal.

4.1 Soil

As reported herein, petroleum-impacted soils have been removed from the Site to meet residential SCTLs, except for a small area where one sample (SS-N-2') reported benzo(a)pyrene above the default Commercial/Industrial SCTL in the northwest corner of the property at a current depth greater than two (2) feet bls. Future construction plans include adding additional soil above this area to bring the property to grade for construction, as well as installation of impermeable surface cover in the form of a paved parking lot. Therefore, the soil represented by this sample will be more than 2 ft below land surface and beneath paving once redevelopment is completed.

As indicated by the FDEP (2014), because the risk of exposure to soils deeper than 2 feet below ground surface is generally limited to construction workers who are only exposed to soil infrequently and for only a short period of time, a restrictive covenant is not needed to meet the requirements for conditional closure as long as another form of institutional control is in place. Based upon conditions at this Site, according to agency guidance (FDEP, 2014) only a deed notice needs to be filed in the property records so that subsequent purchasers will be aware that there may be some impacted soils still present that need to be handled appropriately if they are disturbed. This does not limit future redevelopment, but merely identifies the impacted area and appropriate measures needed to manage the soil. Therefore, the soils will meet the criteria for closure with the implementation of a deed notice.

4.2 Groundwater

Groundwater samples were obtained from all of the monitoring wells that could be located prior to the interim source removal and analyzed for petroleum storage tank constituents. These samples showed only one well (MW-5) to contain isopropyl benzene at 1.3 ug/L, a concentration slightly above the organoleptic-based GCTL of 0.8 ug/L, but significantly less than the health-based standard of 700 ug/L, indicating contamination is not present in accordance with criteria in Chapter 62-780, F.A.C. for brownfield sites. All other potential contaminants were either non-detect or were well below GCTLs in groundwater prior to removal of the tanks, soil excavation, and building demolition. Because no groundwater contamination (as defined in rule) was present prior to the ISR, pursuant to Rule 62-780.600(5)(m)3.b., F.A.C., only one sampling event of representative monitoring wells must meet the No Further Action criteria of subsection 62-780.680(1), F.A.C., to demonstrate that the Site meets the criteria for closure.

The post-interim source removal groundwater analytical data collected in June 2015 indicate that the groundwater is not contaminated. The groundwater results reported only a very low detection of isopropyl benzene at an estimated value 0.1 ug/L above the organoleptic GCTL (0.8 ug/L) in only one monitoring well, MW-21. This analyte was detected at a similarly low concentration in MW-5 prior to the ISR (in vicinity of the western dispenser area), but it was not detected in the groundwater samples collected from MW-18 and MW-19, which were near the MW-21 well location, prior to the interim source removal, and was not detected in any of the soil samples collected during this investigation.

In addition, the GCTL of 0.8 ug/L for isopropyl benzene is based upon secondary organoleptic criteria, not a health-based standard. The health-based standard for isopropyl benzene is 700 ug/L. In accordance with the provisions for brownfield sites under Rule 62-780.680(1)(c)1.a, F.A.C., the criteria for No Further Action are met because the default Chapter 62-777, F.A.C. GCTL of 0.8 ug/L is based on organoleptic criteria, the concentration detected is less than the health-based standard, and the shallow groundwater is not used in the vicinity of the Site; therefore, contamination is not present in groundwater. Progressive concludes that isopropyl benzene is not of concern and does not require any further evaluation or action.

4.3 No Further Action Proposal

Based on the above information, Progressive believes that the criteria for No Further Action (NFA) with conditions have been met pursuant to Rule 62-780.680(2), F.A.C. pending a deed notice (institutional control) being filed for the limited soils remaining below 2 ft depth that exceed the Commercial/Industrial SCTL for benzo(a)pyrene in one small area of the Site. Upon receipt of concurrence from MDCRER that a conditional NFA is appropriate for this Site, a deed notice will be filed with Miami-Dade County that includes information regarding the location and extent of impacted soil, the contamination present, and cautionary statements regarding appropriate management/disposal of these soils should they be disturbed or excavated. Documentation that the deed notice has been filed will be provided to MDCRER, to be attached to the Site Rehabilitation Completion Order (SRCO) with Conditions. Progressive requests that MDCRER approve this request for NFA and agree to issue a conditional SRCO upon receipt of documentation that a deed notice/institutional control has been recorded for the property with Miami-Dade County.

5. REFERENCES

- Bradner, A., McPherson, B.F., Miller, R.L., Kish G., and Bernard, B., 2005. Quality of Ground Water in the Biscayne Aquifer in Miami-Dade, Broward, and Palm Beach Counties, Florida, 1996-1998, with Emphasis on Contaminants, U.S. Geological Survey Open File Report 2004-1438, 20 pgs.
- Cherokee Groundwater Consultants, Inc., 1990a. Contamination Assessment Report, dated August 6, 1990.
- Cherokee Groundwater Consultants, Inc., 1990b. Contamination Assessment Report Addendum, dated December 20, 1990.
- FDEP Division of Waste Management, 2014. Memorandum: *Chapter 62-780, F.A.C., Supplemental Guidance for Application of Direct Exposure Soil Cleanup Target Levels for Subsurface Soils*, dated December 18, 2014.
- Properties Environmental Assessment & Remediation, Inc. (PEAR) 2010. Limited Source Removal Initiative Cost Proposal and Scope of Work, dated February 2, 2010.

974 So.2d 431

District Court of Appeal of Florida,
Second District.

SARASOTA COUNTY, Florida, Petitioner,

v.

BOW POINT ON the GULF CONDOMINIUM
DEVELOPERS, LLC, a Florida limited
liability company, Respondent.

No. 2D07-1984.

|

Oct. 26, 2007.

Synopsis

Background: Corporation appealed from compliance order of code enforcement special magistrate requiring it to cease operating a motel. The Circuit Court, Twelfth Judicial Circuit, Sarasota County, sitting in its appellate capacity, reversed compliance order. County petitioned for writ of certiorari.

[Holding:] The District Court of Appeal, Wallace, J., held that 16-month interruption of motel operation for necessary repairs and renovations did not trigger discontinuance provision in county zoning ordinance.

Petition denied.

West Headnotes (2)

[1] Zoning and Planning

↔ Cessation of use

Sixteen-month interruption of operation of motel, which predated applicable county zoning regulation, such that it had continued operating under benefit of a grandfather clause despite its nonconforming use, for necessary repairs and renovations did not trigger discontinuance provision in county zoning ordinance, and thus, reopening of motel was not unlawful under discontinuance provision of ordinance.

Cases that cite this headnote

[2] Administrative Law and Procedure

↔ Scope of Review in General

Where a circuit court reviews local governmental administrative action, three questions are asked: whether due process was afforded, whether the administrative body applied the correct law, and whether its findings are supported by competent substantial evidence. U.S.C.A. Const.Amend. 14.

1 Cases that cite this headnote

Attorneys and Law Firms

***431** Stephen E. DeMarsh, County Attorney, and Gary K. Oldehoff, Assistant County Attorney, Sarasota, for Petitioner.

David A. Wallace and Morgan R. Bentley of Williams Parker Harrison Dietz & Getzen, P.A., Sarasota, for Respondent.

Opinion

WALLACE, Judge.

Sarasota County petitions for a writ of certiorari to quash an order of the circuit court acting in its appellate capacity. The circuit court's order reversed a compliance order that had been issued by a code enforcement special magistrate. The compliance order required Bow Point on the Gulf Condominium Developers, LLC, to cease operating a motel on Manasota Key. Although the motel use was nonconforming, the motel operation predated the applicable county zoning regulation. After the zoning regulation went into effect, the ***432** motel had continued operating under the benefit of a grandfather clause. Because the circuit court applied the correct law in at least one ground of its decision when it concluded that a sixteen-month interruption of the motel operation for necessary repairs and renovations did not trigger a discontinuance provision in the zoning ordinance, we deny the petition.

[1] Under the County's zoning ordinance, nonconforming uses that continue to operate after the effective date of the regulation are subject to the following discontinuance provision:

Discontinuance

If any such nonconforming use ceases for any reason (except when governmental action impedes access to the premises) for a period of more than 365 consecutive days, any subsequent use of such land shall conform to the regulations specified by these zoning regulations for the district in which such land is located.

Sarasota County, Fla., Zoning Regulations art. 8.2.3.b. (2004). Such a discontinuance provision is one of the methods by which nonconforming uses may be gradually eliminated over the course of time. Other methods include attrition, destruction, and obsolescence. See *3M Nat'l Adver. Co. v. City of Tampa Code Enforcement Bd.*, 587 So.2d 640, 641 (Fla. 2d DCA 1991); Mark A. Rothenberg, *The Status of Nonconforming Use Law in Florida*, 79 Fla. B.J. 46, 46 (Mar.2005).

After a hearing, the special magistrate¹ found that Bow Point's property had been "re-opened for business as a motel/inn after ceasing such use for a period greater than 365 days" in violation of the discontinuance provision. The special magistrate's order directed Bow Point to "cease all operations as a commercial hotel/motel establishment in 60 days." Bow Point appealed to the circuit court, and the circuit court reversed the compliance order.²

On review by certiorari in this court, the County does not claim a denial of due process in the circuit court. Therefore,

our review of the circuit court's order is limited to determining whether the circuit court applied the correct law. See *Massey v. Charlotte County*, 842 So.2d 142, 144 (Fla. 2d DCA 2003).

[2] In its order, the circuit court based the reversal of the special magistrate's order on five separate grounds. As to four of these grounds, we conclude that the circuit court applied the incorrect law.³ *433 However, the circuit court applied the correct law in determining that the suspension of Bow Point's motel operation for sixteen months during necessary repairs and renovations did not constitute a discontinuance of the nonconforming use. See *City of Miami Beach v. State ex rel. Parkway Co.*, 128 Fla. 118, 174 So. 443, 445 (1937); *Maroon v. Miami-Dade County*, 6 Fla. L. Weekly Supp. 754d (Fla. 11th Cir.Ct. Aug. 25, 1999). See generally Rothenberg, 79 Fla. B.J. at 47-48. Accordingly, the reopening of the motel was not unlawful under the discontinuance provision of the applicable county zoning ordinance.

Petition denied.

STRINGER and SILBERMAN, JJ., concur.

All Citations

974 So.2d 431, 32 Fla. L. Weekly D2551

Footnotes

- 1 It appears from our record that Sarasota County uses special magistrates to hear code enforcement proceedings. The use of special magistrates instead of boards is authorized by section 162.03, Florida Statutes (2005). Under section 162.03(2), the special magistrate enjoys the same status as the code enforcement board. See *Richbon, Inc. v. Miami-Dade County*, 791 So.2d 505, 506 n. 1 (Fla. 3d DCA 2001) (referring to "special masters," the term used in earlier versions of the statute).
- 2 Review of a code enforcement board's order is by appeal to the circuit court. §§ 26.012(1), 162.11, Fla. Stat. (2005); Fla. R.App. P. 9.030(c)(1)(C). See *Richbon, Inc.*, 791 So.2d at 506 n. 2; *Kirby v. City of Archer*, 790 So.2d 1214, 1215 (Fla. 1st DCA 2001).
- 3 In at least two instances, the circuit court departed from its appellate role and improperly reweighed the evidence that had been presented to the special magistrate. Under section 162.11, an appeal of the code enforcement board's order to the circuit court "shall not be a hearing de novo but shall be limited to appellate review of the record created before the enforcement board." Where, as in this matter, the circuit court reviews local governmental administrative action, "three questions are asked: whether due process was afforded, whether the administrative body applied the correct law, and whether its findings are supported by competent substantial evidence." *Lee County v. Sunbelt Equities, II, Ltd. P'ship*, 619 So.2d 996, 1003 (Fla. 2d DCA 1993). The circuit court is not permitted to go further and reweigh the evidence presented to the administrative agency. *Id.*



Valvoline
Instant Oil Change

18112

EXIT ONLY

EXIT ONLY

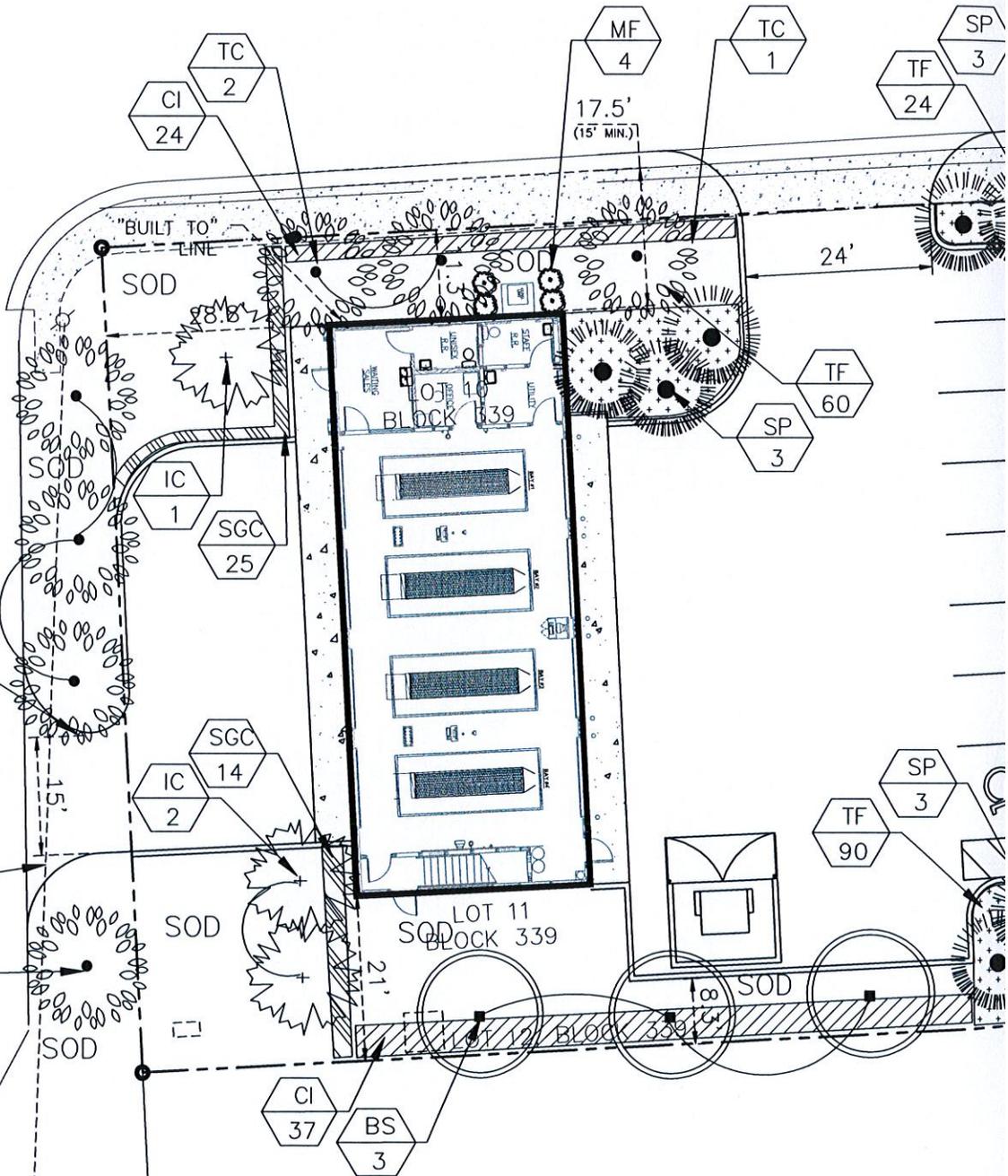
4241

N.E. 123RD STREET (A.K.A. "S.R. 922")
(75' RW)

LOT 9
BLOCK 339

N.E. 16TH AVENUE
(75' RW - PLAT)

FPL-OH LINES
LOCATION
APPROXIMATE



J:\38535\5.9 Drawings\59isc\current\38535_landscape L-1.0.dwg Modified: 12/14/2015 By: debra.hernandez Plotted By: christopher.pence

RESOLUTION NO. R-2013-4

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, DESIGNATING A FORMER GAS STATION SITE LOCATED AT 1600 NE 123 STREET, IN THE CITY OF NORTH MIAMI, AS A "BROWNFIELD AREA" PURSUANT TO SECTION 376.80(2)(B), FLORIDA STATUTES, FOR THE REHABILITATION AND ECONOMIC DEVELOPMENT OF THE SITE, IN ACCORDANCE WITH THE FLORIDA BROWNFIELDS REDEVELOPMENT ACT, AND CONSISTENT WITH THE INTENT OF THE CITY'S COMPREHENSIVE PLAN; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO DO ALL THINGS NECESSARY TO EFFECTUATE THE BROWNFIELD AREA DESIGNATION; PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES.

WHEREAS, Goal 9 of the City of North Miami ("City") Comprehensive Plan ("Comprehensive Plan") provides that City shall "strive to create an economic environment that will enhance the economic prosperity of local businesses and attract new business while improving the quality of life for all of its citizens"; and

WHEREAS, Policy 6D.1 of the Comprehensive Plan provides that the City should protect its natural resources, soils, native vegetation, fisheries, and marine and wildlife habitats; and

WHEREAS, the Section 376.80, Florida Statutes, grants the City the authority to designate property by Resolution as a "brownfield area", in order to provide for the property's environmental remediation and redevelopment, and to promote economic development and revitalization to the affected area; and

WHEREAS, on December 4, 2012, Land South Partners I, LLC ("Land South"), filed an application with the City Community Planning & Development Department, requesting the designation of a contaminated parcel of land, formerly used as gas station, located at 1600 NE 123rd Street, consisting of approximately thirteen thousand six hundred fifty square feet (13,650'), or approximately 0.31 acres in size ("Brownfield Site"), as more particularly described in the attached Exhibits A and B; and

WHEREAS, Land South has acquired and will take full ownership of the Brownfield Site, and intends to rehabilitate and redevelop the subject property in order to improve it for commercial and/or retail service use with a particular emphasis on retail banking, which will greatly improve the area's employment prospect and boost economic activity; and

WHEREAS, the City administration has reviewed Land South's request and has determined that it satisfies the intent of the Comprehensive Plan as well as the relevant criteria that apply in designating a brownfield area, as specified in Section 376.80(2)(b), Florida Statutes, and has determined and finds that the Brownfield Site qualifies for designation as a brownfield area, because the following requirements have been satisfied:

1. Land South owns and/or controls the real estate parcels proposed for designation and has agreed to rehabilitate and redevelop the parcels;
2. The rehabilitation and redevelopment of the Brownfield Site will increase economic productivity in the area and Land South has provided assurances that the redevelopment of the site will result in the creation of at least five (5) new permanent full time jobs;
3. The redevelopment of the Brownfield Site is consistent with the City's Comprehensive Plan and is a permissible use under the City's Land Development Regulations;
4. Proper notice of the proposed rehabilitation of the Brownfield Site has been provided to neighbors and nearby residents, and Land South has provided those receiving notice the opportunity to provide comments and suggestions regarding the rehabilitation; and
5. Land South has provided reasonable assurances that it has sufficient financial resources to implement and complete a rehabilitation agreement and redevelopment plan.

WHEREAS, the City desires to notify the Florida Department of Environmental Protection designating the Brownfield Site as a brownfield area to further its rehabilitation and redevelopment, in accordance with Sections 376.77 through 376.85, Florida Statutes; and

WHEREAS, the applicable procedure set forth under Section 376.80(1), Florida Statutes, and the notice requirement under Section 166.041(3)(c)2, Florida Statutes, have been followed; and

WHEREAS, the Mayor and City Council have determined that the proposed brownfield area designation on the subject property is in the best interest of the City, and advantageous to the public health, safety and welfare.

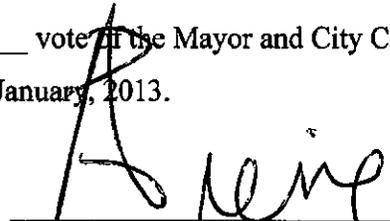
NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. Property Designation. The Mayor and City Council of the City of North Miami, Florida, hereby, designate a former gas station site located at 1600 NE 123 Street, in the City of North Miami as a Brownfield Area pursuant to Section 376.80(2)(b), Florida Statutes, for the rehabilitation and economic development of the site, in accordance with the Florida Brownfields Redevelopment Act, and consistent with the intent of the City's Comprehensive Plan, attached hereto as "Exhibit A" and "Exhibit B".

Section 2. Authority of City Manager and City Attorney. The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager and City Attorney to do all things necessary to effectuate the Brownfield Area designation.

Section 3. Effective Date. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a 5-0 vote of the Mayor and City Council of the City of North Miami, Florida, this 8 day of January, 2013.



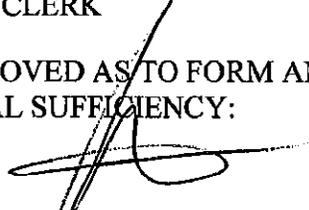
ANDRE D. PIERRE, ESQ.
MAYOR

ATTEST:



MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: Councilman Blynn

Seconded by: Councilman Galvin

Vote:

Mayor Andre D. Pierre, Esq.	<u> x </u>	(Yes)	<u> </u>	(No)
Vice Mayor Marie Erlande Steril	<u> x </u>	(Yes)	<u> </u>	(No)
Councilperson Michael R. Blynn, Esq.	<u> x </u>	(Yes)	<u> </u>	(No)
Councilperson Scott Galvin	<u> x </u>	(Yes)	<u> </u>	(No)
Councilperson Jean R. Marcellus	<u> x </u>	(Yes)	<u> </u>	(No)