



**NORTH MIAMI BOARD OF ADJUSTMENT MEETING AGENDA
776 NORTHEAST 125 STREET, NORTH MIAMI CITY HALL, 2ND FLOOR
WEDNESDAY, MARCH 16, 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: NOVEMBER 18, 2015 BOARD OF ADJUSTMENT MEETING

III. COMMUNICATIONS: BOARD MEMBER COMMUNICATIONS

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 COVERED CARPORTS ENTRYWAYS, OR CANOPIES THAT MAY BE APPROVED BY ADMINISTRATIVE VARIANCE; SAID VARIANCE TO BE REVIEWED UNDER THE CRITERIA SET FORTH IN ARTICLE 3, DIVISION 6, SECTION 3-606 OF THE LDRS.

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.

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.

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

To: Honorable Board of Adjustment Members

From: Andrew Dixon
Zoning Administrator
Community Planning & Development Department

Date: March 16th, 2016

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

Application Summary

Applicant/Agent: EL KIOSKO LATIN CAFE – 13290 W. DIXIE HIGHWAY
Location: 13290 W. DIXIE HIGHWAY
Land Area: 6,489- sq. ft.
Folio Number: 06-2229-049-0530
Petition: VARIANCE TO ARTICLE 5, DIVISION 1, SECTION 5-103 OF THE NORTH MIAMI CODE OF ORDINANCES, LAND DEVELOPMENT REGULATIONS (“LDRS”) TO ALLOW AN EXISTING BUSINESS TO CONSTRUCT AN OVERHANG IN THE REAR 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.

Staff Recommendation

Approval

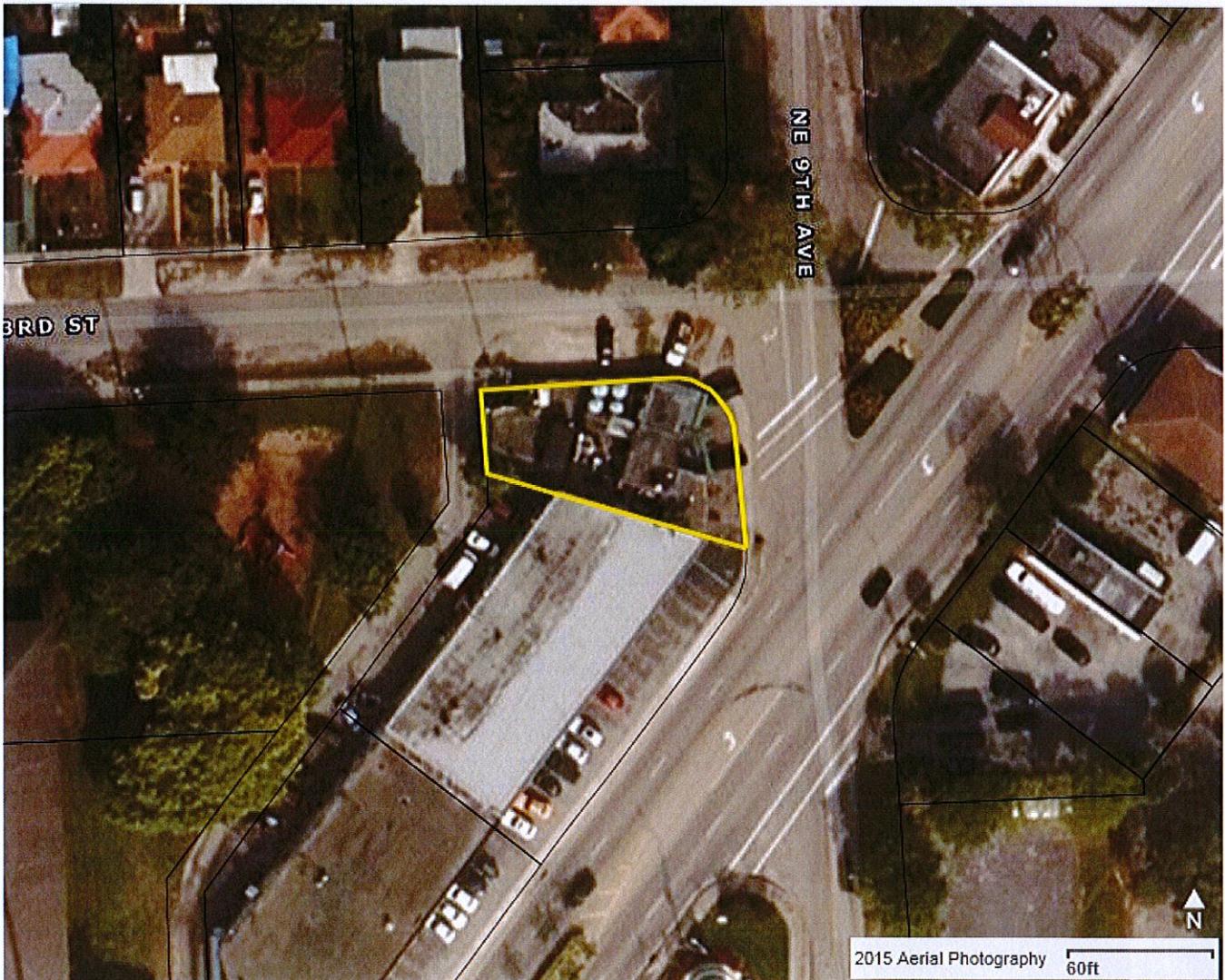
Project Summary

The subject property is located at 13290 W. Dixie Highway, the lot size is approximately 6,489 square feet / .14 acres. Applicant is requesting variance to allow an existing business to construct an overhang in the rear 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 development permitted in the C-1 district. The applicant’s request to construct this overhang will enable him to provide outside dining for his customers which will not result in the diminution of the value of any adjacent property.

Neighborhood Land Use Characteristics

Property	Future Land Use	Existing Zoning	Existing Use/Subdivision
Site	Commercial / Office	C-1, Commercial	Commercial
North	Commercial / Office	C-1, Commercial	Commercial
South	Community Facility	PU, Planned Unit	Community Facility
East	Commercial / Office	C-1, Commercial	Commercial
West	Low Medium Density Residential	R-2, Single Family	Single-Family

The subject property is located at 13290 W. Dixie Highway. The surrounding properties are all single-family homes. The following aerial pictures depict the location of the proposed site.



Consistency with the City of North Miami Comprehensive Land Use Plan

The subject property is designated commercial/office on the City's adopted Future Land Use Map (FLUM). In accordance with Policy 1.13.2 of Objective 1.13 of the Future Land Use Element (FLUE) of the City's Comprehensive Plan, this land use category is intended to provide land area for business, office, retail, services and other commercial enterprises including commercial facilities such as schools, museums, place of worship, child and adult day care centers, nursing homes, government administration, police and fire protection facilities. This new addition to the rear of the property is consistent with the City of North Miami Comprehensive Land Use Plan and will enhance pedestrian related activity at the street level while creating an enjoyable pedestrian experience.

Compliance with the City of North Miami Land Development Regulations

The subject property is zoned C-1, Commercial on the City's Adopted Zoning Map. The purpose of this zoning district is to provide the citizens of the city with convenient access to goods and services without adversely impacting the integrity of residential neighborhoods. The applicant proposal to construct an overhang within the side street setback of 4.42 feet instead of the required minimum setback of 15 feet set forth in Article 5, Division 1, Section 5 – 103 of the LDR is in compliance with the City of North Miami Land Development Regulations.

Criteria for granting variances: Article 3, Division 6, Section 3-606 of the City's LDRs provides authority to the BOA to hear and grant or deny applications for variances from the terms of these LDRs. In evaluating an application for variances, the BOA shall find that the applicant demonstrates compliance with four of the six items as listed below:

1. 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.
2. The unusual circumstances or conditions necessitating the variance request are present in the neighborhood and are not unique to the property.
3. That the requested variance maintains the basic intent and purpose of the subject regulations, particularly as it affects the stability and appearance of the neighborhood.
4. 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.
5. The variance requested is the minimum variance that will make possible the reasonable use of the land, structure, or building.
6. 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.

Analysis

As per Article 5, Division 1, Section 5 – 103 of the LDR, requires that all structures in a commercial zoned area shall maintain 15 feet setback from the public street as set forth in North Miami Code of Ordinance however the proposed overhang falls within the rear side yard setback which ultimately triggered this variance. The structure meets both rear yard and front setbacks on the property. Upon reviewing this variance request, it is found to meet at least 5 of the 6 criteria set forth in Article 3, Division 6, Section 3-606, as demonstrated below.

- ✓ 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.

Not Applicable

- ✓ The unusual circumstances or conditions necessitating the variance request are present in the neighborhood and are not unique to the property.

The setback requirements set forth for commercial properties is a condition that is present in most commercial districts and hinders restaurants from providing outdoor dining thus creating an unusual circumstance that are present in the neighborhood and 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 neighborhood.

The requested variance is to construct an overhang in order to provide seating for future customers. This variance request will provide the citizens of the city with convenient access and services without adversely impacting the integrity of adjacent properties and will not have any negative impact on the aesthetic quality of the surrounding residences. Therefore, the variance maintains the basic intent and purpose of the LDRs.

- ✓ 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 requested variance is to construct an overhang in order to provide seating for future customers. The side street setback for commercial properties set forth in Article 5, Division 1, Section 5 – 103 prohibits this use which is commonly enjoyed by other restaurants in this zoning district. This variance will allow the applicant's customers to enjoy outdoor dining and will encourage pedestrian related activities at the street level.

- ✓ The variance requested is the minimum variance that will make possible the reasonable use of the land, structure, or building.

The requested variance is indeed the minimum variance that will allow the applicant to provide covered outdoor seating for his customers which will provide protection from the elements of weather making it a reasonable use of land.

- ✓ 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.

The variance request will allow the existing business to construct an overhang in the rear with a side street setback of 4.42 feet instead of the required minimum setback of 15 feet which shall enable them to provide adequate outdoor seating and at the same time, protecting them from the elements of weather. The request will not change the use of the property as a commercial use, It will be in harmony with the general appearance and character of the neighborhood, and will not result in the diminution of the value of any adjacent property.

Conclusion

Given the foregoing, the applicants' request conforms to the goals, objectives and policies of the City's Comprehensive Plan, as it will neither alter the use of the property as a commercial use, nor affect the neighborhood character. In fact, it is in keeping with the intent and purpose of the City's LDRs, as it will not be detrimental to the public and will provide the citizens of the city with convenient access and services without adversely impacting the integrity of adjacent properties. Therefore, recommendation is made to approve the requested variance.

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 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. No comments were received from any of the neighboring property owners within the aforementioned radius.

Applicable Ordinances

Article 3, Division 3, Section 3-302 Subsections (A), (B) and (C).
Article 3, Division 6, Section 3-606;
Article 5, Division 1, Section 5 – 103

Attachments

Submitted Application
Submitted Letter of Intent
Submitted Survey and Plans
Newspaper Advertisement



OFFICE OF THE PROPERTY APPRAISER

Summary Report

Generated On : 3/10/2016

Property Information	
Folio:	06-2229-049-0530
Property Address:	13290 W DIXIE HWY North Miami, FL 33161-4133
Owner	RAUDEL BALSEIRO
Mailing Address	13290 W DIXIE HWY NORTH MIAMI, FL 33161 USA
Primary Zone	6600 COMMERCIAL - LIBERAL
Primary Land Use	2211 DRIVE-IN RESTAURANT : RETAIL OUTLET
Beds / Baths / Half	0 / 0 / 0
Floors	1
Living Units	0
Actual Area	Sq.Ft
Living Area	Sq.Ft
Adjusted Area	1,025 Sq.Ft
Lot Size	6,489 Sq.Ft
Year Built	1954



Assessment Information			
Year	2015	2014	2013
Land Value	\$116,802	\$110,313	\$110,313
Building Value	\$31,356	\$30,194	\$30,194
XF Value	\$5,532	\$5,553	\$5,575
Market Value	\$153,690	\$146,060	\$146,082
Assessed Value	\$153,690	\$146,060	\$146,082

Benefits Information				
Benefit	Type	2015	2014	2013
Note: Not all benefits are applicable to all Taxable Values (i.e. County, School Board, City, Regional).				

Short Legal Description
29-30 52 42
IRONS MANOR 2ND ADD PB 17-39
LOT 1 & 2 BLK 27
LOT SIZE IRREGULAR
OR 20455-0931 0602 1

Taxable Value Information			
	2015	2014	2013
County			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$153,690	\$146,060	\$146,082
School Board			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$153,690	\$146,060	\$146,082
City			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$153,690	\$146,060	\$146,082
Regional			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$153,690	\$146,060	\$146,082

Sales Information			
Previous Sale	Price	OR Book-Page	Qualification Description
10/04/2013	\$100	28863-4082	Corrective, tax or QCD; min consideration
06/01/2005	\$0	23509-2246	Sales which are disqualified as a result of examination of the deed
06/01/2002	\$205,000	20455-0931	Sales which are qualified
12/01/2000	\$0	19450-0326	Sales which are disqualified as a result of examination of the deed

The Office of the Property Appraiser is continually editing and updating the tax roll. This website may not reflect the most current information on record. The Property Appraiser and Miami-Dade County assumes no liability, see full disclaimer and User Agreement at <http://www.miamidade.gov/info/disclaimer.asp>

Version:



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

To: Honorable Board of Adjustment Members

**From: Andrew Dixon
Zoning Administrator
Community Planning & Development Department**

Date: March 16th, 2016

V-2-16 EAST OF 5th TOWNHOMES – 12121 N.E. 5th AVENUE & 509 N.E. 121st STREET

Application Summary

Applicant/Agent: EAST OF 5th TOWNHOMES – 13290 W. DIXIE HIGHWAY
Location: 12121 N.E. 5th AVENUE & 509 N.E. 121st STREET
Land Area: 40.215 SQ FT
Folio Number: 06-2230-031-0150 & 06-2230-031-0160
Petition: 5th AVENUE DEVELOPMENT, LLC – 12121 NE 5TH AVENUE & 509 NE 121ST STREET

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DISTRICT WHERE SAID MOVEMENT IS ONLY PERMITTED FOR SINGLE-FAMILY RESIDENCES.

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Staff Recommendation

Approval

Project Summary

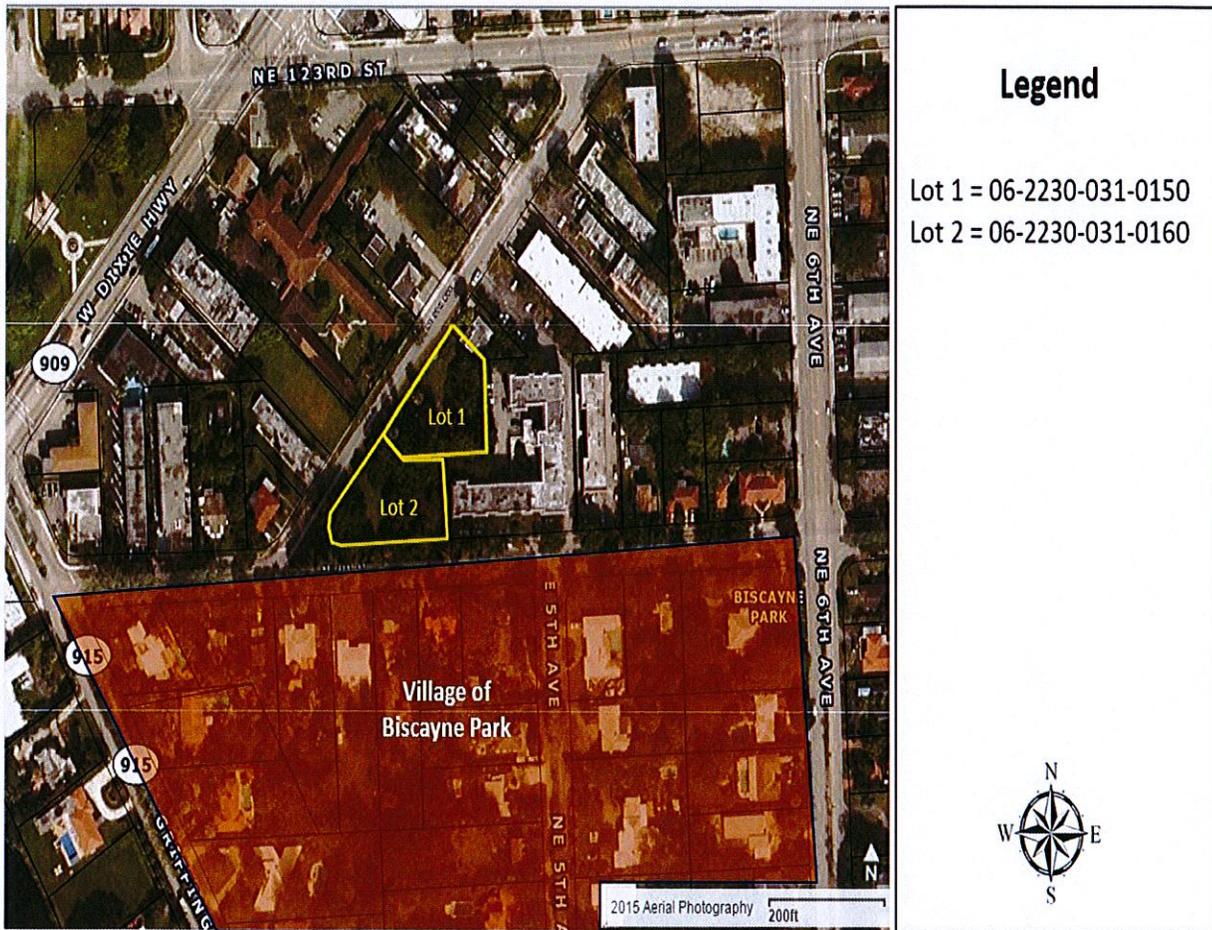
The subject property consists of two (2) contiguous irregularly shaped lots (See Fig. 1). The northerly parcel (Lot 1) located at 12121 N.E. 5th Avenue contains 19,468 sq. ft. or 0.44-acre. The southerly parcel (Lot 2) with the physical address of 509 N.E. 121st Street comprises 20,757 sq. ft. or 0.48-acre and, based on the City’s 2007 Adopted Future Land Use Map (FLUM), falls within the Village of Biscayne Park Transition Zone (the ‘Transition Zone’). Together, these two (2) lots comprise 40,215 sq. ft. or 0.92-acre. It is the intent of the owner on record for these two (2) parcels, 5th Avenue Development, LLC, (the ‘Applicant’) to develop these two (2) lots with a 20-unit market-rate townhouse residential development.

Based on the current Medium Density Residential (75 ft., 16 du/ac) land use designation and R-5 zoning classification, the subject property can accommodate a development of up to fifteen (15) units and as high as 75 ft. The Applicant’s proposal to develop a proposed 20-unit development, which will consist of two (2) 2-story structures, will be very much in scale and character with some of the surrounding low-lying residential developments, and therefore be more in keeping with the spirit and intent of the Transition Zone. Since the desired density exceeds what is permitted by right on the site, the applicant submitted a conditional use permit as per the requirements of Article 4, Division 2, Section 4-204 of the LDRs and was granted a density bonus of 13.25 dwelling units per acre (du/ac), which would transfer five (5) floating residential units from the NRO secondary pool to Lot 1.

Neighborhood Land Use Characteristics

Property	Future Land Use	Existing Zoning	Existing Use/Subdivision
Site	Medium Density Residential	R-5, Multifamily District	Multifamily
North	Central Business Commercial	C-3, Commercial	Commercial
South	Medium Density Residential	R-5, Multifamily District	Multifamily
East	Medium Density Residential	R-5, Multifamily District	Multifamily
West	Low Density Residential	R-2, Single Family	Single-Family

The subject property is located at 12121 N.E. 5th Avenue & 509 N.E. 121st Street. The surrounding North Miami properties are mostly multifamily homes. Based on the current medium density residential (75 ft., 16 du/ac) land use designation and R-5 zoning classification, the subject property can accommodate a development of up to fifteen (15) units and as high as 75 ft. The proposed development will be very much in scale and character with some of the surrounding low – lying residential developments and therefore be more in keeping with the spirit and intent of the Transition Zone. The following aerial picture depicts the location of the proposed site.



Consistency with the City of North Miami Comprehensive Land Use Plan

The subject property is designated Medium Density Residential on the City’s adopted Future Land Use Map (FLUM). In accordance with Policy 1.13.1 of Objective 1.13 of the Future Land Use Element (FLUE) of the City’s Comprehensive Plan, this land use category is intended primarily for multifamily residential dwellings with a maximum density of 16.3 dwellings per acre (du/ac), as set forth in Policy 1.1 of Objective 1.1 of the FLUE, as such, the request is consistent. Furthermore, the applicant’s variance request does not change either the use of the property as a multifamily residence, or the density allowed in the land use category. Therefore, the request conforms to the goals, objectives and policies of the Comprehensive Plan. It is also in keeping with Objective 3B.4 of the Housing Element of the Comprehensive Plan, which requires that the City “ensures an adequate balance of housing that will ensure a range of housing options by providing the appropriate densities, intensities, height, type, and size that encourage the creation of new housing units.” The proposed market-rate townhouse development is a suitable addition to revitalize this stagnant area of the City, which features an aging housing stock and has not seen any redevelopment in over fifty (50) years. The proposed townhouse development is consistent with the City of North Miami Comprehensive Land Use Plan.

Compliance with the City of North Miami Land Development Regulations

The subject property is zoned R-5, Multifamily on the City’s Adopted Zoning Map. The purpose of this zoning district is to preserve and enhance medium density multifamily neighborhoods in the city. This zoning district encourages redevelopment to provide housing needs of a diverse community at a greater

density than other districts. This development is consistent with the residential medium land use category of the comprehensive plan and is compatible with the overall residential character of the district. The applicant's proposed townhouse development is compliant with the City of North Miami Land Development Regulations.

Criteria for granting variances: Article 3, Division 6, Section 3-606 of the City's LDRs provides authority to the BOA to hear and grant or deny applications for variances from the terms of these LDRs. In evaluating an application for variances, the BOA shall find that the applicant demonstrates compliance with four of the six items as listed below:

1. 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.
2. The unusual circumstances or conditions necessitating the variance request are present in the neighborhood and are not unique to the property.
3. That the requested variance maintains the basic intent and purpose of the subject regulations, particularly as it affects the stability and appearance of the neighborhood.
4. 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.
5. The variance requested is the minimum variance that will make possible the reasonable use of the land, structure, or building.
6. 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.

Analysis

As per Article 5, Division 20, Section 5-2002(B) of Chapter 29 of the City of North Miami Code of Ordinance, Land Development Regulations ("LDRS") to allow a proposed townhouse development to setback 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 variance to Article 5, Division 20, Section 5-2001(D) of Chapter 29 of The City of North Miami Code of Ordinance, 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 and to allow forward and reverse (back out) movement under Article 5, Section 5, Division 14, Section 5-1409(B)(1). Upon reviewing this variance request, it is found to meet at least 4 of the 6 criteria set forth in Article 3, Division 6, Section 3-606, as demonstrated below.

- ✓ 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 irregular triangular site configuration with an acute angled corner creates special conditions and circumstances which are specific to this site. The unusual configuration of the lot poses a challenge to achieve the setbacks set forth in the Land Development Regulations

- ✓ The unusual circumstances or conditions necessitating the variance request are present in the neighborhood and are not unique to the property.

Not Applicable

- ✓ That the requested variance maintains the basic intent and purpose of the subject regulations, particularly as it affects the stability and appearance of the neighborhood.

The reduced side setbacks and the number of townhouses in a row will not affect the stability and appearance of the neighborhood but will further enhance its character. The proposed development is similar in nature to other townhouse developments approved by the City of North Miami with direct access from street to parking space. The proposed development significantly improves the neighborhood fabric and maintains the appearance of the neighborhood

- ✓ 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.

Not Applicable

- ✓ The variance requested is the minimum variance that will make possible the reasonable use of the land, structure, or building.

The irregular triangular site configuration of the lot poses a challenge to achieve the setbacks set forth in the Land Development Regulations. The proposed variances are necessary to complete the project. Three of the requested variances which is the side setback from the east and west side of the property line, proposed forward and reverse (back out) parking and the number of townhouses in a row are marginal in nature and it is the minimum variance that makes possible the reasonable use of the land

- ✓ 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.

The proposed requested variances are in harmony with the general intent of the neighborhood, and maintains the basic intent and purpose of the subject regulations particularly as it affects the stability and appearance of the City. The proposed development will help to increase property values and improve the neighborhood character hence creating a pedestrian friendly environment and one that's architecturally appealing.

Conclusion

Given the foregoing, the applicant's request conforms to the goals, objectives and policies of the City's Comprehensive Plan, as it will neither alter the use of the property as a multifamily use, nor affect the neighborhoods character and its surroundings. In fact, it is in keeping with the intent and purpose of the City's LDRs and will ultimately improve the appearance and character of the neighborhood. Therefore, recommendation is made to approve the requested variance.

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 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. No comments were received from any of the neighboring property owners within the aforementioned radius.

Applicable Ordinances

Article 3, Division 3, Section 3-302 Subsections (A), (B) and (C).

Article 3, Division 6, Section 3-606;

Article 5, Division 20, Section 5-2002(B)

Article 5, Division 20, Section 5-2001(D)

Article 5, Section 5, Division 14, Section 5-1409(B) (1).

Attachments

Submitted Application

Submitted Letter of Intent

Submitted Survey and Plans

Newspaper Advertisement



OFFICE OF THE PROPERTY APPRAISER

Summary Report

Generated On : 3/10/2016

Property Information	
Folio:	06-2230-031-0160
Property Address:	509 NE 121 ST North Miami, FL 33161-6266
Owner	5TH AVENUE DEVELOPMENT LLC
Mailing Address	20900 NE 30 AVE 318 AVENTURA, FL 33180 USA
Primary Zone	3700 MULTI-FAMILY - 10-21 U/A
Primary Land Use	0101 RESIDENTIAL - SINGLE FAMILY : 1 UNIT
Beds / Baths / Half	2 / 1 / 0
Floors	1
Living Units	1
Actual Area	1,292 Sq.Ft
Living Area	1,236 Sq.Ft
Adjusted Area	1,264 Sq.Ft
Lot Size	19,036 Sq.Ft
Year Built	1940



Assessment Information			
Year	2015	2014	2013
Land Value	\$266,504	\$95,180	\$61,867
Building Value	\$57,053	\$55,560	\$55,560
XF Value	\$0	\$0	\$0
Market Value	\$323,557	\$150,740	\$117,427
Assessed Value	\$142,085	\$129,169	\$117,427

Benefits Information				
Benefit	Type	2015	2014	2013
Non-Homestead Cap	Assessment Reduction	\$181,472	\$21,571	

Note: Not all benefits are applicable to all Taxable Values (i.e. County, School Board, City, Regional).

Short Legal Description
BISCAYNE PARK ESTS BLKS 8 9 10 11
PB 5 - 107
S108FT OF LOT 15 & LOT 16 LESS
BEG 108FTN OF SE COR OF LOT 16 TH
NWLY42.34FT NELY 46.3FT S62.45FT

Taxable Value Information			
	2015	2014	2013
County			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$142,085	\$129,169	\$117,427
School Board			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$323,557	\$150,740	\$117,427
City			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$142,085	\$129,169	\$117,427
Regional			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$142,085	\$129,169	\$117,427

Sales Information			
Previous Sale	Price	OR Book-Page	Qualification Description
07/02/2015	\$460,000	29689-1992	Qual on DOS, multi-parcel sale
10/15/2008	\$100	26633-0357	Sales which are disqualified as a result of examination of the deed
07/01/2006	\$0	24779-1819	Sales which are disqualified as a result of examination of the deed
04/01/1988	\$57,500	13696-2351	Sales which are qualified

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Version:



OFFICE OF THE PROPERTY APPRAISER

Summary Report

Generated On : 3/10/2016

Property Information	
Folio:	06-2230-031-0150
Property Address:	12121 NE 5 AVE North Miami, FL 33161-6264
Owner	5TH AVENUE DEVELOPMENT LLC
Mailing Address	20900 NE 30 AVE 318 AVENTURA, FL 33180 USA
Primary Zone	3700 MULTI-FAMILY - 10-21 U/A
Primary Land Use	0101 RESIDENTIAL - SINGLE FAMILY : 1 UNIT
Beds / Baths / Half	2 / 1 / 0
Floors	1
Living Units	1
Actual Area	Sq.Ft
Living Area	Sq.Ft
Adjusted Area	1,335 Sq.Ft
Lot Size	19,488 Sq.Ft
Year Built	1924



Assessment Information			
Year	2015	2014	2013
Land Value	\$272,832	\$97,440	\$63,336
Building Value	\$57,897	\$56,363	\$56,363
XF Value	\$693	\$702	\$711
Market Value	\$331,422	\$154,505	\$120,410
Assessed Value	\$145,696	\$132,451	\$120,410

Benefits Information				
Benefit	Type	2015	2014	2013
Non-Homestead Cap	Assessment Reduction	\$185,726	\$22,054	

Note: Not all benefits are applicable to all Taxable Values (i.e. County, School Board, City, Regional).

Short Legal Description
BISCAYNE PARK ESTS BLKS 8 9 10 11
PB 5 - 107
LOTS 14 & 15 LESS S108FT & PORT
OF LOT 16 DESC BEG 108FT N OF SE
COR OF LOT 16 TH NWLY42.34FT

Taxable Value Information			
	2015	2014	2013
County			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$145,696	\$132,451	\$120,410
School Board			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$331,422	\$154,505	\$120,410
City			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$145,696	\$132,451	\$120,410
Regional			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$145,696	\$132,451	\$120,410

Sales Information			
Previous Sale	Price	OR Book-Page	Qualification Description
07/02/2015	\$460,000	29689-1992	Qual on DOS, multi-parcel sale
07/01/2008	\$0	26503-1076	Sales which are disqualified as a result of examination of the deed
07/01/2006	\$0	24779-1820	Sales which are disqualified as a result of examination of the deed
04/01/1988	\$57,500	13696-2352	Sales which are qualified

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Version:



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

To: Honorable Board of Adjustment Members

From: Andrew Dixon
Zoning Administrator
Community Planning & Development Department

Date: March 16th, 2016

V-3-16 Valvoline Instant Oil Change – 1600 NE 123rd Street

Application Summary

Applicant/Agent: LAND SOUTH PARTNERS / BERCOV RADELL & FERNANDEZ – THOMAS H. ROBERTSON

Location: 1600 NE 123rd St

Land Area: 13,650 Sq. ft.

Folio Number: 06-2228-001-0591

Petition: 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/VEHICLE SERVICE, MAJOR IN CONNECTION TO THE PROPERTY LOCATED AT 1600 NE 123 STREET IN THE C-2BW DISTRICT AND AUTHORIZE A VEHICLE SERVICE, MINOR

Staff Recommendation

Approval

Project Summary

The property is approximately 13,650 square feet. The property is zoned C-2BW and has been used as an automobile full service station performing all forms of automobile repairs for over 20 years. In 2009 the City adopted a revision to the zoning districts which caused the use of the property to become a nonconforming use. On August 31, 2012, Miami Dade County Environmental Technician posted a notice on site and confirmed that the business was still operational. As DERM continued its inspections, the prior owner kept their business tax receipt current until October 1, 2012. Although the business tax expired, the use continued as a service station, this was evident by the signage located at the subject property. Significantly, under the City Code Section 11-33, the existence of a sign on a piece of property is prima facia evidence of operation of a business. The signs on the property (See Exhibit “R”) remained

on the property until demolition in May of 2015. **Please note that the demolition of the existing structure was necessary to accomplish the cleanup and removal of underground storage tanks.**

On September 26th 2012, applicant purchased the mortgage note and mortgage on the property intending to acquire the property and develop the project. At the time of acquisition, the applicant was aware of significant environmental violations on the property and the need to conduct significant environmental remediation to the property.

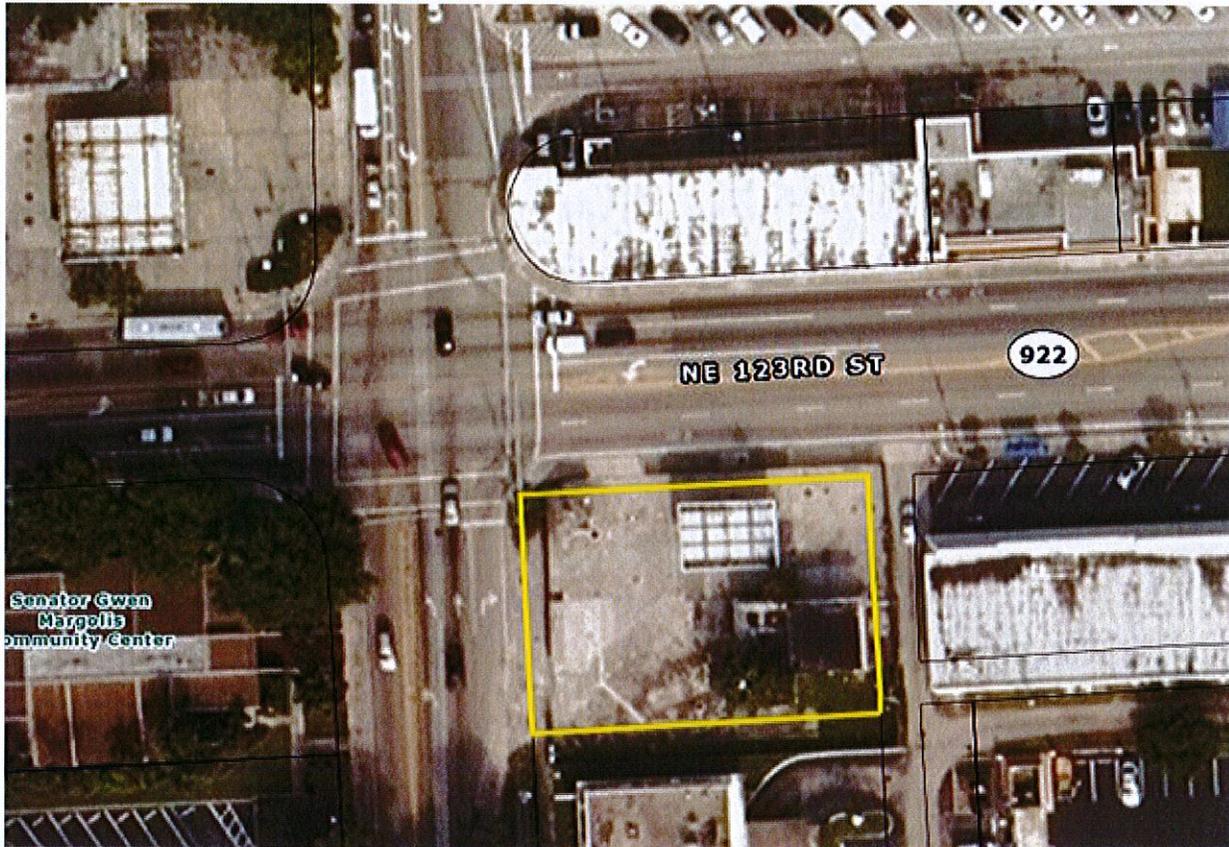
On December 4th, 2012, Land South Partners 1, LLC (“Land South”), filed an application with the City Community Planning & Development Department, requesting the designation of a contaminated parcel of land (“Brownfield Site”), formerly used as a gas station located at 1600 NE 123rd Street. .In late 2012, applicant obtained the services of a qualified environmental professional to start the process of cleaning up the property.

On March 28th, 2013, Miami Dade County conducted a compliance assistance visit which confirmed that the business was still operational. On April 10th 2013, applicant filed with Miami Dade County’s Department of Environmental Management (DERM) a Contaminated Assessment Plan (CAP) as required by the appropriate regulations. It should be noted that the applicant did not own the property at this point and did not even have access to the property.

On May 22nd 2013, the applicant filed a request for admissions on property located at 1600 NE 123rd Street however admission was denied by the prior owner. During this time the automobile service station remained open and operating on the property up until March 14, 2014. After receiving certificate of title dated August 13, 2014, the environmental cleanup began immediately which included the demolition of the existing building. As recently as September 25th, 2015 clean up and sampling was still being conducted. (Please see attached time line below)

Neighborhood Land Use Characteristics

Property	Future Land Use	Existing Zoning	Existing Use/Subdivision
Site	Commercial/Office	C-2BW	Commercial
North	Commercial/Office	C-2BW	Commercial
South	Commercial/Office	C-2BW	Commercial
East	Commercial/Office	C-2BW	Commercial
West	Commercial/Office	C-2BW	Commercial



Consistency with the City of North Miami Comprehensive Land Use Plan

The subject property is designated commercial/office on the City's adopted Future Land Use Map (FLUM). In accordance with Policy 1.13.2 of Objective 1.13 of the Future Land Use Element (FLUE) of the City's Comprehensive Plan, this land use category is intended to provide land area for business, office, retail, services and other commercial enterprises including commercial facilities such as schools, museums, place of worship, child and adult day care centers, nursing homes, government administration, police and fire protection facilities..

Compliance with the City of North Miami Land Development Regulations

The purpose of this zoning district is to foster economic growth and enhance high quality commercial areas in the city. At no time was the existing use of the property as a service station and major automotive repair facility ever voluntarily ceased. The operation of the gas station portion of the property was only terminated by the regulatory requirements and actions of DERM. The termination of the use of the property as a major automotive repair facility was only due to the involuntary removal of the prior owner due to the foreclosure in March of 2014. Therefore, the applicant's proposal to terminate the status as a non-conforming use set forth in Article 6, Division 7, Section 6 – 702 of the LDR is in compliance with the City of North Miami Land Development Regulations

Standards for terminating nonconforming status: Article 6, Division 7, Section 6-702 states that a special exception approval shall not be granted to terminate the status as a nonconforming use or structure unless the non-conformity is improved in a way that will reduce the impact of the non-conformity on the neighborhood. The impact of the non-conformity can be reduced as follows:

1. Significant upgrading and improvement to the building facades
2. Addition of substantial landscaping to buffer the property
3. Upgrading or improving onsite parking to minimize overflow parking to the extent possible on the property.

Analysis

As per Article 6, Division 7, Section 6 – 702 of the LDR, the applicant is repurposing a non-conforming use by providing minor automobile services to the public. This particular use will be more restrictive than the prior automobile service station in that no gasoline sales would be offered and the level of available automotive services would be reduced from that of a full service station. The project will substantially improve the non-conforming use through substantial improvements to the building landscaping and facades, the use of modern equipment will significantly improve the environmental processes. The project will improve the parking and flow of traffic on site. The city code has provisions designed to eliminate or improve non-conforming uses. In Section 6-101 of the code, it states in part, “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.” The code seeks to encourage the improvement of nonconforming uses as an alternative to the elimination of those uses

Section 6-205 provides, “If a nonconforming use ceases operation 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.” However the use has never ceased operation, but has merely been interrupted for environmental clean-up and access being denied by prior owner. **Sarasota County v Bow Point on the Gulf Condominium Developers, LLC, 974 So. 2d 431 (Fla. 2d DCA 2007)**. Here, where the use was discontinued only for the purpose of effecting the required environmental clean-up, it has certainly not ceased for the purpose of terminating the non-conforming use.

Conclusion

Given the foregoing, the applicants’ request conforms to the goals, objectives and policies of the City’s Comprehensive Plan, the configuration of the property is somewhat small, but more importantly, is very confining in terms of the efficient use of the property. By granting this Special Exception, the applicant can place the facility on the property in a much more efficient manner and still comply with City’s zoning requirements. The request has also meets the (3) criteria’s set forth in Article 6, Division 7, Section 6 – 702 of the LDR for the granting of this special exception. In fact, the applicant proposes to significantly improve both the building and its façade, and also improve traffic flow, landscaping and services. Therefore, recommendation is made to approve the special exception request.

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 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. No comments were received from any of the neighboring property owners within the aforementioned radius.

Applicable Ordinances

Article 3, Division 3, Section 3-302 Subsections (A), (B) and (C).

Article 6, Division 7, Section 6 – 702;

Article 6, Division 7, Section 6 – 205

Attachments

Submitted Application

Submitted Letter of Intent

Submitted Survey and Plans

Newspaper Advertisement

Miami Dade County - Verification General Site Visit Form

Circuit Court Documents



OFFICE OF THE PROPERTY APPRAISER

Summary Report

Generated On : 3/10/2016

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



Assessment Information			
Year	2015	2014	2013
Land Value	\$518,700	\$518,700	\$298,252
Building Value	\$54,680	\$52,847	\$53,042
XF Value	\$11,049	\$11,069	\$11,088
Market Value	\$584,429	\$582,616	\$362,382
Assessed Value	\$584,429	\$398,620	\$362,382

Benefits Information				
Benefit	Type	2015	2014	2013
Non-Homestead Cap	Assessment Reduction		\$183,996	

Note: Not all benefits are applicable to all Taxable Values (i.e. County, School Board, City, Regional).

Short Legal Description
28-29 52 42
MIAMI SHORES UNIT A PB 17-46
LOT 10 LESS N5FT & ALL LOT 11 & N8FT OF LOT 12 BLK 339
LOT SIZE 13650 SQUARE FEET

Taxable Value Information			
	2015	2014	2013
County			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$584,429	\$398,620	\$362,382
School Board			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$584,429	\$582,616	\$362,382
City			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$584,429	\$398,620	\$362,382
Regional			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$584,429	\$398,620	\$362,382

Sales Information			
Previous Sale	Price	OR Book-Page	Qualification Description
08/05/2014	\$100	29268-4969	Financial inst or "In Lieu of Foreclosure" stated
12/01/1992	\$0	00000-00000	Sales which are disqualified as a result of examination of the deed

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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.

COPY

BERCOW RADELL & FERNANDEZ
ZONING, LAND USE AND ENVIRONMENTAL LAW

RECEIVED

NOV 12 2015

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

VIA HAND DELIVERY

BUILDING & ZONING

November 11, 2015

✓ Ms. Tanya Wilson-Sejour
Planning Director
City of North Miami
Community Planning & Development Department
776 NE 125 Street
North Miami, FL 33161

Re: Letter of Intent for a Zoning Verification Request for 1600 NE 123 Street,
North Miami, Florida

Dear Ms. Wilson-Sejour:

This law firm represents Land South Partner 1, LLC, (Applicant) the owner of the property located at 1600 NE 123 Street in the City of North Miami ("Property") identified by folio number 06-2228-001-0591. This letter shall serve as the Applicant's letter of intent in support of a Zoning Verification Request to determine the continued right to the nonconforming use of the Property for automotive services.

Property. The Property is an approximately 13,650 square foot lot previously improved with a 1,987 square foot automobile gas and full service station. The Property is zoned C-2BW. The property has been used as an automobile full service station performing all forms of automobile repairs for over 20 years. In 2009 the City adopted a revision to the zoning districts which caused the use of the pProperty to be a nonconforming use.

Project. The Applicant proposes to repurpose the nonconforming use to a Valvoline Instant Oil Change facility, providing minor automobile services to the public. (Project) The facility use would be more restrictive than the prior automobile service station in that no gasoline sales would be offered and the level of available automotive services would be reduced from that of a full service station. The Project will substantially improve the nonconforming use though

substantial improvements to the building and facades, the use of modern equipment and significantly improved environmental processes. In addition, the Project will improve the traffic flow and parking on the Property.

Continuation of the nonconforming use. On September 26, 2012, Applicant purchased the mortgage note and mortgage on the Property intending to acquire the Property and develop the Project.¹ (See Exhibit A, Closing Statement) At the time of acquisition, the Applicant was aware of significant environmental violations on the Property and the need to conduct significant environmental remediation to the Property.

In late 2012, Applicant obtained the services of qualified environmental professionals to begin the necessary clean-up of the Property.² (See Exhibit B) On April 10, 2013 Applicant filed with Miami-Dade County's Department of Environmental Management (DERM) a Contamination Assessment Plan (CAP) as required by the appropriate regulations. It should be noted that Applicant did not own the Property at this point and did not even have access to the Property. The CAP was approved, thereby allowing contamination assessment to be conducted on the Property, on June 5, 2013. (See Exhibit C), DERM approval of CAP)

During this time, Applicant continued a foreclosure action initiated by the former mortgage holder, in order to obtain title to the property. Applicant, if it had not intended to use the Property as a Valvoline Instant Oil Change facility, would not have needed to conduct the clean-up since the Property could have been sold at auction after the foreclosure with Applicant having no legal responsibility for the clean-up.

The automobile service station remained open and operating on the Property up until March 14, 2014. (See Exhibit D) Applicant obtained title to the Property by Certificate of Title dated August 5, 2014 and recorded August 13, 2014. (Exhibit E) Applicant promptly began the required environmental clean-up which required the demolition of the existing building. That clean-up is still continuing with sampling being conducted as recently as September 25, 2015.³ The finalization of the clean-up was denied by DERM on August 18, 2015 with subsequent response by Applicant on September 17, 2015. (See Exhibit F)

¹ As part of the purchase of the note, Applicant paid delinquent taxes in excess of \$40,000.

² Applicant, through the City, had the Property declared a Brownfield.

³ To date, Applicant has expended over \$400,000 on the cleanup of the Property.

Applicant's lessee obtained the services of IBI GROUP (Florida), Inc. to begin the re-purposing of the Property in order to complete the Project. IBI was told that the Project would not be allowed due to the zoning of the Property and the cessation of the nonconforming use. However, the Project is the continuation of the nonconforming use.

Throughout the time involved with this Property and the Project, Applicant intended to continue the use of the Property as before and only interrupted the operation of the use of the Property due to the necessary clean-up of the Property.

City Code and applicable law. The City Code has provisions designed to eliminate or improve nonconforming uses. In Section 6-101 of the Code it states in part, "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." In this manner, the Code seeks to encourage the improvement of nonconforming uses as an alternative to elimination of those uses.

Section 6-205 provides, "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." However, the use has never ceased operation, but has merely been interrupted. The Florida courts have recognized that when a use is merely interrupted for renovations and repairs, it is not a discontinuance for purposes of terminating a nonconforming use. *Sarasota County v. Bow Point on the Gulf Condominium Developers, LLC*, 974 So. 2d 431 (Fla. 2d DCA 2007). Here, where the use was discontinued only for the purpose of effecting the required environmental clean-up, it has certainly not ceased for purposes of terminating the non-conforming use.

Similarly, the change in ownership of the property does not affect the grandfathered right to the nonconforming use. *Hobbs v. Department of Transportation*, 831 So.2d 745 (Fla. 5th DCA 2002)

In re-purposing the use, Applicant proposes to significantly improve both the building and its façade, and also improve traffic flow, landscaping and services. This in addition to the significantly improved environmental processes that will accompany this use. (See Composite Exhibit G)

Ms. Tanya Wilson-Sejour
City of North Miami
November 11, 2015
Page 4

In light of the City Code's clear purpose to improve non-conforming uses, the lack of cessation of the use and the significantly improved facility the Applicant is proposing, Zoning Verification of the continued right to the nonconforming use is requested.

We look forward to your favorable review and response to this Zoning Verification. 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: Ms. Brittni Duria,
Senior Planning Technician
Carey Graham

BERGOW RADELL & FERNANDEZ
OPERATING ACCOUNT
200 SOUTH BISCAYNE BOULEVARD, SUITE 850
MIAMI, FLORIDA 33131

SUNTRUST
ACH RT 051000104
63-215-631

DATE
November 10, 2015

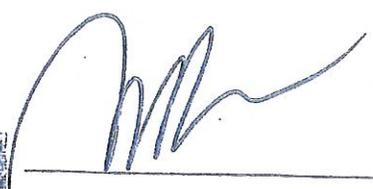
ESBSM Check Fraud
Protection for Business

AMOUNT

*** Two Hundred Nine ***** 76/100 \$ 209.76

PAY
TO THE
ORDER
OF:

CITY OF NORTH MIAMI



AUTHORIZED SIGNATURE

RE: Application Fee

⑈0000 1736⑈ ⑆063 102152⑆ 1000180097965⑈

BERGOW RADELL & FERNANDEZ
OPERATING ACCOUNT
200 SOUTH BISCAYNE BOULEVARD, SUITE 850
MIAMI, FLORIDA 33131

SUNTRUST
ACH RT 051000104
63-215-631

DATE
November 10, 2015

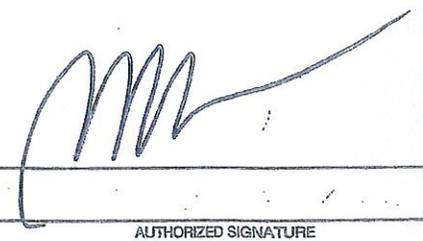
ESBSM Check Fraud
Protection for Business

AMOUNT

*** One Hundred Four ***** 88/100 \$ 104.88

PAY
TO THE
ORDER
OF:

CITY OF NORTH MIAMI



AUTHORIZED SIGNATURE

RE: Application Fee

⑈0000 1736⑈ ⑆063 102152⑆ 1000180097965⑈

Community Planning & Development
12400 NE 8 Avenue
North Miami, Florida 33161
Phone: (305)893-6511



ZONING VERIFICATION REQUEST

All zoning verification requests must be submitted in writing, in person or by fax. A fee of **\$104.88** is applied to EACH folio number. A fee of **\$209.76** is applied for the specific request for the property (with research analysis).

Please make all checks payable to City of North Miami/Check or Money Order accepted.

REQUESTORS / CONTACT PERSON (Recipients Info)

Requestor / Contact Name: Land South Partner 1, LLC

Company Name: c/o Thomas Robertson, Esq., Bercow Radell & Fernandez, PLLC

Address: 200 S. Biscayne Boulevard, Suite 850

City: Miami

State: FL

Zip: 33131

Phone: (305) 377-6226

Fax: (305) 377-6222

E-mail: TRobertson@brzoninglaw.com

LOCATION / PROJECT / SITE INFORMATION:

FOLIO Number(s) of Location/Site: 06-2228-001-0591

Property Current Zoning Designation C-2BW (6201 Commercial)

Address of property (if developed): 1600 NE 123 Street, North Miami, Florida 33181

Comments/Requests/Type of Inquiry: Please see attached Letter of Intent.



LOAN PURCHASE CLOSING STATEMENT

BANK: STONEHENGE FINANCIAL SERVICES CORP.
PURCHASER: LAND SOUTH PARTNERS, 1, LLC, a South Carolina limited liability company
PURCHASE PRICE: \$250,000.00
CLOSING DATE: September 26, 2012

Purchase Price	\$	250,000.00
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Subtotal:	\$	<u>250,000.00</u>
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Costs associated with loan purchase:

Real Estate Taxes	43,137.48
Recording Fees	150.00
Foreclosure report	300.00
Attorney Fee: Thomas M. Clark P.A.	5,000.00
Foreclosure Costs (Est)	3,000.00
Foreclosure Attorney Fee (Est)	10,000.00
Survey (Est)	1,500.00
Foreclosure Commitment	300.00
Post Foreclosure Title Premium (Est - \$1,050K)	5,200.00
Subtotal:	\$ <u>68,587.48</u>

Purchase Price plus estimated costs	\$	<u>318,587.48</u>
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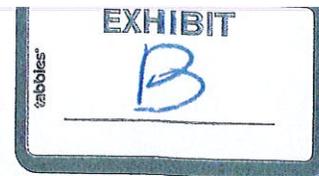
From: "Bridget Morello" <bmorello@progressiveec.com>

Date: November 9, 2012 at 1:40:59 PM EST

To: "Michael Goldstein" <MGoldstein@Goldsteinenvlaw.com>

Cc: "Carey Graham" <carey.graham@landsouth.net>, <patrick@landsouth.net>, "Patricia Novaro" <PNovaro@Goldsteinenvlaw.com>

Subject: RE: Land South of MB Brownfields Designation: Exhibits for BSRA (Contractor Certification Form & NELAC Certificate)



Michael,

We'll review and get the necessary information back to you. The BSRA cannot be executed until after the brownfield designation resolution occurs. Also, we do not want to have boilerplate schedule/deadlines in the BSRA, so I will pay particular attention to that aspect of the document.

Have a nice weekend.

Bridget

Bridget Morello, PE | President
Progressive Engineering & Construction, Inc.
3912 W. Humphrey Street, Tampa, FL 33614
813.930.0669 x205 | F: 813.930.9809
bmorello@progressiveec.com
www.progressiveec.com

Privileged Work Product--This message inclusive of any attachments is intended for the use of the listed recipient(s), and contains information that is privileged, confidential, and exempt from disclosure under applicable laws. If you have received this message in error, please delete it. Note that no dissemination, distribution or copying of this message is allowed by any party other than the intended recipient, or its employee or agent delivering the message.

From: Michael Goldstein [<mailto:MGoldstein@Goldsteinenvlaw.com>]

Sent: Friday, November 09, 2012 8:32 AM

To: Bridget Morello

Cc: 'Carey Graham'; patrick@landsouth.net; Patricia Novaro

Subject: Land South of MB Brownfields Designation: Exhibits for BSRA (Contractor Certification Form & NELAC Certificate)

Bridget, good morning. We've been engaged by Land South to handle the Brownfields Area designation as well as prepare the draft Brownfield Site Rehabilitation Agreement for submittal to the Miami-Dade County Department of Regulatory and Economic Resources ("RER"). Usually the former precedes the latter but we are going to try to run both simultaneously to save time. To that end, I've enclosed a working copy of the draft BSRA for the site, which may have a few more tweaks before all is said and done. However, in the meanwhile, we also need to prepare the various exhibits, which will include, among other things, a Contractor Certification Form and Quality Assurance Certificate. Accordingly, when you have a moment, could you please fill out, execute and return the enclosed Contractor Certification form? We'll also need a NELAC for the lab you intend to use. I've provided examples of these documents for review and guidance and to facilitate your response. In addition, here's what the BSRA says about the materials:

ATTACHMENT E - - CONTRACTOR CERTIFICATION FORM

The PRFBSR must ensure that any contractor performing site rehabilitation program tasks at or for the real property described in Attachment A has provided documentation and certification to the Department or to the delegated local program that the contractor meets the requirements of Paragraph 6, Site Contractor. These requirements include all

certification and licensing requirements and implementation of the Standard Operating Procedures (SOPs) for field sampling in accordance with Chapter 62-160, F.A.C. (A link to Chapter 62-160 is provided in the Attachment F instructions below). The Contractor Certification Form (CCF) shall be completed and submitted to the District Brownfields Coordinator or to the delegated local program Brownfields Coordinator. The completed CCF shall be submitted as **Attachment E**.

If at the time of execution of the BSRA, the identity of a contractor is not known, the PRFBSR shall ensure that the required CCF is submitted to the Department or to the delegated local program prior to the contractor performing site rehabilitation program tasks at the site. The contractor is defined as the contractor responsible for performing the site rehabilitation program tasks at or for the real property described in Attachment A. The contractor may subcontract to other licensed contractors. See §489.113(9), F.S. for additional information.

ATTACHMENT F - - QUALITY ASSURANCE CERTIFICATE

The PRFBSR shall submit to the Department or the delegated local program documentation as **Attachment F**, showing that a NELAP-recognized accrediting authority (in Florida, the Department of Health, Environmental Laboratory Certification Program) has accredited the laboratory(s) performing analyses. Analytical methods capable of meeting the cleanup target levels in Chapter 62-785, F.A.C., shall be used for all analyses.

For comprehensive information about the Chapter 62-160, F.A.C., a link to the Department's field Standard Operating Procedures, and for the complete text of Chapter 62-160, F.A.C., visit

<http://www.dep.state.fl.us/labs/qa/index.htm>

The Department or the delegated local program reserves the right to reject any results generated by the PRFBSR if any organization performs an activity that is not specifically approved in accordance with Chapter 62-160, F.A.C., if there is reasonable doubt as to the quality of the data or method used, if the sampling was not performed in accordance with the approved SOPs, or if analysis was performed not in accordance with NELAP accreditation, or if the SOPs or NELAP accreditation of any organization expires.

Thank you so much.

Best regards,
-M

Michael R. Goldstein, Esq.
The Goldstein Environmental Law Firm, P.A.
One SE Third Avenue, Suite 2120
Miami, FL 33131
Direct Telephone: (305) 777-1682
Cell Phone: (305) 962-7669
Facsimile: (305) 777-1681
Email: mgoldstein@goldsteinenvlaw.com



Carlos A. Gimenez, Mayor

Department of Regulatory and Economic Resources
Environmental Resources Management
701 NW 1st Court, 4th Floor
Miami, Florida 33136-3912
T 305-372-6700 F 305-372-6982
miamidade.gov

June 5, 2013

CERTIFIED MAIL # 7011 0470 0002 4386 0676
RETURN RECEIPT REQUESTED



Mr. Carey Graham, Managing Member
Land South Partners I, LLC
4722 Highway 17 Bypass S.
Myrtle Beach, SC 29588

Re: Contamination Assessment Plan (CAP) dated April 10, 2013 and submitted by Progressive Engineering & Construction, Inc. for the Land South Partners I Brownfield Site (UT-998/File-7583/BF Site # BF131301001), located at 1600 NE 123rd Street, North Miami, Miami-Dade County, Florida.

Dear Mr. Graham:

The Department of Regulatory and Economic Resources (RER) has reviewed the referenced submittal, received April 12, 2013 and hereby approves it with the following modifications:

- 1. The submitted report indicates that the site was developed in 1962 and underground storage tanks (USTs) were first reported on the property in 1972. Please indicate the use(s) of the property from 1962 through 1972, if known. Additionally, indicate if hydraulic lifts or other related structures currently exist in the mechanical repair shop area of the site. Please note that based on the information provided, further assessment for appropriate contaminants of concern may be required.
2. RER does not object to the preliminary sampling of the seven proposed soil borings and all viable on-site groundwater monitoring wells depicted on Figure 3 of the submitted report before the removal of the unleaded and waste oil USTs and the Oil Water Separator (OWS). Note that in addition to the above, the following is required:
a. The appropriate soil and groundwater assessment and source removal of contaminated soil/groundwater shall be conducted in accordance with Chapter 62-785, Florida Administrative Code (FAC) after the removal of the UST and OWS systems and any other contamination source(s) discovered during site assessment activities. Please note that all soil samples shall be collected outside of clean fill within each source area, as applicable.
b. Soil and groundwater samples collected in the waste oil UST and OWS areas shall be analyzed for all Table C parameters referenced in Chapter 62-785, FAC.
c. At least one monitoring well located in the unleaded UST farm shall also be sampled for VOHs, EDB and Lead.
d. RER records indicate that Organic Vapor Analysis (OVA) readings for soil borings SB-2A, SB-3A, SB-4, SB-5, SB-6 and SB-7 depicted in Figure 2 of the December 20, 1990 Contamination Assessment Report (CAR) exceeded 10 parts per million. Additionally, the soils in the immediate vicinity of MW-5 (depicted in Figure 3 of the submitted report) were documented to contain fuel odor when said well was installed in 1988. Therefore, the above historical findings shall be discussed and incorporated in the current soil and groundwater assessment, as appropriate.

Note that based on the analytical results, additional assessment may be required.

Delivering Excellence Every Day

3. The submitted report indicates that all viable wells will be purged or redeveloped. Please note that any recovery of Free Floating Product during the purging or redevelopment activities or the implementation of Short Term Groundwater Recovery shall be conducted in accordance with Rule 62-785.500, FAC.
4. Note that the proposed submittal of a closure report for the removal of the unleaded and waste oil USTs shall be prepared in accordance with the Limited Tank Closure Report requirements of Chapter 62-761, FAC. Furthermore, Mr. Horacio Wong of RER's Storage Tank Program (305-372-6832) shall be contacted at least 48 hours before the initiation of the closure of the storage tank systems to schedule the tank removal inspection.

Be advised that the vertical and horizontal extent of the contaminant plume(s) must be fully delineated. RER has the option to split any samples deemed necessary with the consultant or laboratory at the subject site. The consultant collecting the samples must perform field sampling work in accordance with the Standard Operating Procedures provided in Chapter 62-160, FAC, as amended. The laboratory analyzing the samples must perform laboratory analyses pursuant to the National Environmental Laboratory Accreditation Program (NELAP) certification requirements. If the data submitted exhibits a substantial variance from the RER split sample analysis, a complete re-sampling using two independent certified laboratories will be required.

RER shall be notified in writing a minimum of three (3) working days prior to the implementation of the referenced plan. Email notifications shall be directed to DERMPCD@miamidade.gov. Please include the file number on all correspondence.

Therefore, you are hereby required to submit to RER for review a Site Assessment Report (SAR) prepared in accordance with Chapter 62-785, FAC within 270 days of the Brownfield Site Rehabilitation Agreement (BSRA) executed on March 13, 2013 or an Interim Source Removal Report (ISRR) prepared in accordance with Rule 62-785.500, FAC within sixty (60) days of the completion of interim source removal activities.

If you have any questions regarding this letter please contact Didier Camacho of the Environmental Monitoring and Evaluation Section at (305) 372-6700

Sincerely,



Wilbur Mayorga, P.E., Chief
Environmental Monitoring & Restoration Division

dc

pc: Mr. Guillermo Corbo, Corbo Oil, Inc., 1600 NE 123rd Street, North Miami, FL 33181
ec: Ms. Bridget Morello, P.E., Progressive Engineering & Construction, Inc., bmorello@progressiveec.com
Mr. Art Torvela, P.E., Brownfields Coordinator, FDEP SE District, Art.Torvela@dep.state.fl.us
Ms. Tricia Kong, RER, kongt@miamidade.gov



Carlos A. Gimenez, Mayor

Department of Regulatory and Economic Resources
Environmental Resources Management
701 NW 1st Court, 4th Floor
Miami, Florida 33136-3912
T 305-372-6700 F 305-372-6982
miamidade.gov

June 5, 2013

CERTIFIED MAIL # 7011 0470 0002 4386 0676
RETURN RECEIPT REQUESTED

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Land South Partners I, LLC
4722 Highway 17 Bypass S.
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Note that based on the analytical results, additional assessment may be required.

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Therefore, you are hereby required to submit to RER for review a Site Assessment Report (SAR) prepared in accordance with Chapter 62-785, FAC within 270 days of the Brownfield Site Rehabilitation Agreement (BSRA) executed on March 13, 2013 or an Interim Source Removal Report (ISRR) prepared in accordance with Rule 62-785.500, FAC within sixty (60) days of the completion of interim source removal activities.

If you have any questions regarding this letter please contact Didier Camacho of the Environmental Monitoring and Evaluation Section at (305) 372-6700

Sincerely,



Wilbur Mayorga, P.E., Chief
Environmental Monitoring & Restoration Division

dc

pc: Mr. Guillermo Corbo, Corbo Oil, Inc., 1600 NE 123rd Street, North Miami, FL 33181
ec: Ms. Bridget Morello, P.E., Progressive Engineering & Construction, Inc., bmorello@progressiveec.com
Mr. Art Torvela, P.E., Brownfields Coordinator, FDEP SE District, Art.Torvela@dep.state.fl.us
Ms. Tricia Kong, RER, kongt@miamidade.gov



IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI DADE COUNTY, FLORIDA

LAND SOUTH PARTNERS 1, LLC,
a South Carolina limited liability company

Case No. 12-45911 CA 15

Plaintiff,

v.

CORBO OIL, INC., a Florida corporation,
et al

Defendants:

_____ /

ORDER APPROVING JOINT STIPULATION FOR ENTRY OF FINAL JUDGMENT OF
FORECLOSURE OF MORTGAGE AND REFORMATION OF MORTGAGE

THIS CAUSE having come before the Court upon that certain Joint Stipulation for Entry of Final Judgment of Foreclosure of Mortgage and Reformation of Mortgage dated as of January 27, 2014 and attached hereto ("Joint Stipulation"), and the Court being otherwise fully advised in the premises, it is therefore

ORDERED AND ADJUDGED that the Joint Stipulation is hereby approved, and it is further

ORDERED AND ADJUDGED that the Parties thereto are hereby directed to comply with said Joint Stipulation and it is further

ORDERED AND ADJUDGED that simultaneously herewith this Court shall enter the Final Judgment of Foreclosure of Mortgage and Reformation of Mortgage attached to the Joint Stipulation as Exhibit "A" and that the Clerk of this Court shall conduct the foreclosure sale for the subject property at the earliest available date.

DONE AND ORDERED in Chambers in Miami Dade County, Florida this _____
day of January, 2014.

Circuit Court Judge

Conformed Copy
JAN 31 2014
JOSE M. RODRIGUEZ
Circuit Judge

Copies furnished to:

Thomas M. Clark, Esq.
Jordan I. Wagner, Esq.
Frank Wolland, Esq

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI DADE COUNTY, FLORIDA

LAND SOUTH PARTNERS I, LLC,
a South Carolina limited liability company

Case No. 12-45911 CA 15

Plaintiff,

v.

CORBO OIL, INC., a Florida corporation,
et al

Defendants.

JOINT STIPULATION FOR ENTRY OF FINAL JUDGMENT OF FORECLOSURE OF
MORTGAGE AND REFORMATION OF MORTGAGE

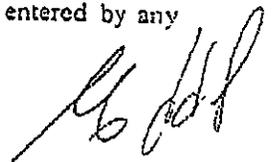
This Joint Stipulation for Entry of Final Judgment of Foreclosure of Mortgage and Reformation of Mortgage ("Joint Stipulation") is made and entered into by and between Land South I, LLC, a South Carolina limited liability company ("Plaintiff") and its attorneys, Thomas M. Clark, P.A. and Jordan I. Wagner, P.A. (collectively "Plaintiffs Attorneys" or separately, "Plaintiffs Attorney") and Corbo Oil, Inc., a Florida corporation ("Corbo Oil"), Guillermo Corbo ("Corbo") and their attorney, Frank Wolland, Esq. ("Corbo Oils and Corbo's Attorney") (Plaintiff, Corbo Oil and Corbo are collectively referred to as the "Parties") as follows:

1. Corbo Oil and Corbo hereby withdraw their Answers and Affirmative Defenses filed to date, admit all allegations in the Complaint and acknowledge that the Plaintiff is entitled to all relief set forth in the Complaint. Therefore, the Parties, and their respective attorneys, do hereby stipulate and agree: (i) that this Court may grant Plaintiff's Motion for Partial Summary Final Judgment as to Count I for Mortgage Foreclosure and Count IV for Reformation of Mortgage; and (ii) that this Court may enter the Final Judgment of Foreclosure of Mortgage and

Reformation of Mortgage (Final Judgment) which is attached hereto and incorporated herein by reference as Exhibit "A".

2. Corbo Oil and Corbo shall vacate the subject property and remove all of their personal property therefrom no later than the Clerk's public sale of the subject property or March 14, 2014, whichever shall first occur. Furthermore, Corbo Oil and Corbo warrant and represent that there are no other parties, individuals or entities that are in possession of the subject property and personal property and that there are no other parties, individuals or entities that have any right to possess the subject property or personal property. Upon vacating the subject property, said property, shall be left in a neat and clean condition, without damage.

3. As an inducement to Plaintiffs entering into this Joint Stipulation, Corbo Oil and Corbo warrant and represent that they have no intention of filing for protection under Title 11 of the United States Code (the "Bankruptcy Code"). Corbo Oil and Corbo acknowledge that Plaintiff has given up valuable rights in connection with this Joint Stipulation and as a result has agreed not to exercise legal remedies available to Plaintiff in exchange for the promises, representations, acknowledgments and warranties of Corbo Oil and Corbo set forth in this Joint Stipulation. Corbo Oil and Corbo hereby agree that if Corbo Oil and/or Corbo shall (i) file with any bankruptcy court of competent jurisdiction or be the subject of any petition under Title 11 of the U.S. Code, as amended, (ii) be the subject of any order for relief issued under Title 11 of the U.S. Code, as amended, (iii) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, (iv) seek consent to or acquiescence in the appointment of any trustee, receiver, conservator or liquidator, (v) be the subject of any order, judgment or decree entered by any

A handwritten signature in black ink, appearing to be "G. D. S.", is located in the bottom right corner of the page.

court of competent jurisdiction approving a petition filed against Corbo Oil and/or Corbo for any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or relief for debtors, the following shall apply:

(a) Any of the foregoing listed in subsection (i) through (v) above shall constitute a default by Corbo Oil and Corbo hereunder.

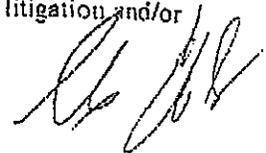
(b) Upon the entry of an order for relief in any bankruptcy proceeding, if the Plaintiff shall apply for relief from the automatic stay imposed by Section 362 of the Bankruptcy Code, or from any other stay or suspension of remedies imposed in any other manner with respect to the exercise of the rights and remedies otherwise available to Plaintiff including, without limitation, the right to foreclosure sale, Corbo Oil and Corbo agree not to directly or indirectly oppose or otherwise defend against Plaintiff's effort to gain such relief. Without limiting the foregoing, Corbo Oil and Corbo acknowledge that they will not raise any defense to such relief that requires Plaintiff to establish or prove the value of the subject property, the lack of adequate protection of Plaintiff's interest in the subject property, or Corbo Oil's lack of equity in the subject property. Corbo Oil and Corbo acknowledge that any bankruptcy filing by them or either of them would be in bad faith, solely for the purpose of repudiating the obligations arising hereunder, that therefore any lifting of the automatic stay would be "for cause" pursuant to 11 U.S.C. Section 362(d)(1).

(c) In the event of the filing of an involuntary petition, Corbo Oil and/or Corbo shall make every effort to dismiss the bankruptcy petition at the earliest possible time, and, in the event the bankruptcy case is not dismissed, Plaintiff shall have the rights set forth in this paragraph 4.

A handwritten signature in black ink, appearing to be 'M. J. [unclear]', located in the bottom right corner of the page.

(d) Corbo Oil and Corbo acknowledge that all cash generated by the subject property is Plaintiffs cash collateral. Corbo Oil and Corbo acknowledge that upon any default under this Joint Stipulation, or upon entry of an order for relief under the Bankruptcy Code, Corbo Oil and Corbo will have no authority to use this cash collateral. Corbo Oil and Corbo further agree that in order to use the cash collateral, the Plaintiff will be entitled, as adequate protection, to monthly payments in the amount of the net cash flow generated by the subject property. Net cash flow will mean all income generated by the subject property less only expenses approved by the Plaintiff for maintenance and operation of the subject property. Any insider management fee will be limited to 2% during the pendency of any bankruptcy case. Plaintiff will be entitled to apply such monthly payments in accordance with the terms of the Plaintiffs Mortgage and Note and other loan documents.

4. Corbo Oil and Corbo do hereby remise, release, acquit, satisfy and discharge the Plaintiff and the Plaintiffs members, managers, officers, successors and/or assigns of and from all manner of action and actions, cause and causes of actions, suits, debts, dues, sum of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which Corbo Oil and/or Corbo ever had, now have, or which any personal representative, successors, heirs or assigns of Corbo Oil and/or Corbo hereinafter can, or shall or may have, against Plaintiff for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of these presents, including without limitation, any and all claims, demands, actions, offsets, defenses, damages or matters whatsoever relating to this litigation, the loan which is the subject matter of this litigation and/or the loan documents.

A handwritten signature in black ink, appearing to be 'C. Corbo', is written over the end of the text in the fourth paragraph.

5. Provided that Corbo Oil and Corbo fulfill all of their obligations set forth in this Joint Stipulation, and further provided that the subject property is conveyed to the Plaintiff by a Certificate of Title duly and properly issued by the Clerk of this Court, or, in the alternative, if Plaintiff elects to not purchase the subject property and Plaintiff has received the proceeds from the Clerk's foreclosure sale, Plaintiff hereby remises, releases, acquits, satisfies and forever discharges Corbo Oil and Corbo and his heirs, successors and/or assigns of and from all, and all manner of action and actions, cause and causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which Plaintiff ever had, now has or shall or may have, or which any personal representative, successors, heirs or assigns of Plaintiff, hereafter can, shall or may have, against Corbo Oil and Corbo, for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of these presents, and specifically including without limitation any and all claims and demands whatsoever arising by virtue of the loan which is the subject of this litigation including the guarantee of said loan by Corbo and any claims which Plaintiff may have against Corbo Oil and Corbo under any environmental law, including CERCLA, RECRA and all other environmental laws.

6. Neither Corbo Oil nor Corbo shall take any action which could reasonably be expected to materially delay or otherwise materially increase the expense associated with the enforcement of Plaintiffs remedies under the subject loan documents or this Joint Stipulation including without limitation, in connection with the completion of the foreclosure sale. Further, to the extent that Corbo Oil's or Corbo's cooperation is requested to facilitate and/or expedite the



enforcement of foreclosure remedies under the subject loan documents, Corbo Oil and Corbo shall promptly take all action requested by Plaintiff.

7. Corbo Oil and Corbo hereby covenant, represent and warrant to Plaintiff that:

(a) The consummation of the matters contemplated hereby constitute the valid and binding obligation of Corbo Oil and Corbo in accordance with its terms.

(b) Corbo Oil and Corbo have the necessary power and authority to enter into this Joint Stipulation and the execution of this Joint Stipulation and the consummation of the matters contemplated hereby constitute the valid and binding obligations of Corbo Oil and Corbo.

(c) No court having jurisdiction has entered a decree or order for relief with respect to Corbo Oil and/or Corbo in any involuntary case under any bankruptcy, insolvency or similar law, or appointed a receiver, liquidator, assignor, custodian, trustee or similar official for Corbo Oil or Corbo, or ordered the winding up or liquidation of the affairs of Corbo Oil or Corbo, nor have they filed a petition for relief or commenced a voluntary case under any bankruptcy, insolvency or similar law, consented to the entry of an order for relief in an involuntary case under any such law, or consented to the appointment of, or taking of possession by, a receiver, liquidator, assignee, trustee, custodian, or similar official for Corbo Oil or Corbo, nor has either or both of them made any general assignment for the benefit of creditors or, with the exception of the subject loan, failed to pay its debts as they became due (as such debts relate to the subject property), nor has any order, judgment or decree been entered decreeing the dissolution of Corbo Oil.

(d) Corbo Oil and/or Corbo shall not undertake any act to challenge: (i) the validity, effectiveness or enforceability of this Joint Stipulation or any transactions contemplated by this

Joint Stipulation, and/or (ii) any right, payment or benefit provided to Plaintiff under this Joint Stipulation.

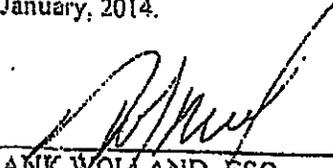
(e) Neither Corbo Oil nor Corbo shall take any steps to interfere with, impede, delay or prevent the implementation of this Joint Stipulation, the transactions contemplated by this Joint Stipulation, or, if Plaintiff is the successful bidder at the foreclosure sale, Plaintiffs ownership, enjoyment or disposition of the subject property.

8. The Parties do hereby agree that the Plaintiff shall pay the sum of \$20,000.00 to Corbo Oil and Corbo as consideration for Corbo Oil and Corbo entering into this Joint Stipulation and fulfilling all their obligations set forth in this Joint Stipulation. Plaintiff shall have no obligation to pay Corbo Oil and/or Corbo any other sums. Simultaneously with the execution hereof, the Plaintiff has deposited said sum of \$20,000.00 into the Thomas M. Clark P.A. Trust Account to be disbursed as follows: (i) upon Plaintiffs receipt of this fully executed Joint Stipulation, the executed Order Approving Joint Stipulation set forth hereinbelow, and the executed Final Judgment attached hereto as Exhibit 'A', the Plaintiff shall cause the Plaintiffs Attorney to disburse the sum of \$10,000.00 to Corbo Oil's and Corbo's Attorney by Thomas M. Clark, P.A. Trust Account check payable to Frank Wolland Trust Account; and (ii) upon issuance of the Certificate of Title for the subject property to the Plaintiff, or upon Plaintiffs receipt of the proceeds from the Clerk's foreclosure sale if the Plaintiff elects to not purchase the subject property at the foreclosure sale, and provided Corbo Oil and Corbo have vacated the subject property and have removed all of their personal property from the subject property, and further provided that Corbo Oil and Corbo have timely complied with all of their obligations and representations under this Joint Stipulation, the Plaintiff shall cause the Plaintiffs Attorney to disburse the remaining sum of \$10,000.00 to Corbo Oil's and Corbo's Attorney by Thomas M.

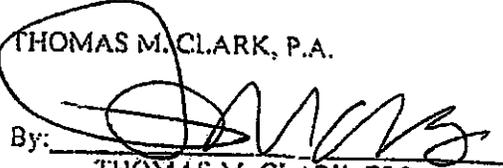
Clark, P.A. Trust Account check payable to Frank Wolland Trust Account. Upon such disbursements, Plaintiff and Plaintiff's Attorneys shall be released and discharged from any and all obligations hereunder.

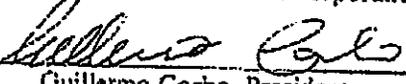
9. This Joint Stipulation may be signed in counterparts and the counterparts when taken together shall constitute the entire Joint Stipulation. Also, facsimile signatures and signatures transmitted by email shall be binding with the same force and effect as original signatures.

IN WITNESS WHEREOF, this Joint Stipulation has been entered into as of the 27th day of January, 2014.

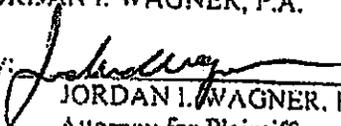


FRANK WOLLAND, ESQ.
Attorney for Corbo Oil, Inc. and Guillermo Corbo

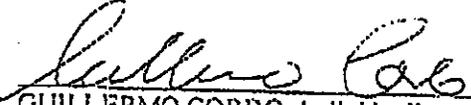
THOMAS M. CLARK, P.A.

By: _____
THOMAS M. CLARK, ESQ.
Attorney for Plaintiff

CORBO OIL, INC., a Florida corporation
By: 

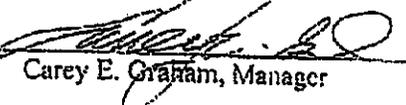
Guillermo Corbo, President

JORDAN I. WAGNER, P.A.
By: 

JORDAN I. WAGNER, ESQ.
Attorney for Plaintiff



GUILLERMO CORBO, Individually

LAND SOUTH PARTNERS 1, LLC, a South Carolina limited liability company
By: 

Carey E. Graham, Manager
By: _____
Patrick Marino, Manager