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July 16, 2008

Mayor Joy Cooper
Vice Mayor Bill Julian
Commissioner Dotty Ross
Commissioner Francine Schiller
Commissioner Keith London
City of Hallandale Beach
400 S Federal Highway
Hallandale Beach, Florida 33009

Re: Administrative Appeal -- 637 Foster Road, Hallandale Beach, Florida

Dear Mayor Cooper and Commissioners:

We represent Ameen Abdel, who maintains a leasehold interest in the property located at 637 Foster Road. Our client wishes to open a convenience store at this location and has been in contact with the City of Hallandale since July of 2007 discussing the use of this location for that purpose. We initially sent a letter to the City and held a meeting with Melissa Anderson and Richard Cannone requesting that the City process our application and plans for commercial alterations and ultimately permit the operation of a convenience store at 637 Foster Road. The City denied our request. The purpose of this administrative appeal before you is to respectfully request the Council in their wisdom to approve our appeal and instruct the City to process our application and plans for commercial alterations and ultimately permit the operation of a convenience store at 637 Foster Road.

The facts are as follows: Our client leases space and operates a convenience store at 636 Foster Road in the City of Hallandale Beach. The City acquired the building that our client leases using the threat of eminent domain. The City chose not to renew our client's lease. It is our understanding that the City plans to create a park at 636 Foster Road. Our client was provided until the end of April 2008 to vacate the property.

Our client is also leasing a space across the street from his convenience store, at 637 Foster Road. He operated a laundry mat from this location. The building is a 2 story structure which we have been told by the City is a nonconforming structure due to the setbacks currently provided on the site not meeting the City's land development regulations. The laundry mat occupied the first floor and the second floor currently houses occupied apartment units.

As a result of being informed that he could no longer operate a convenience store at 636 Foster Road, our client determined he should relocate the convenience store to 637 Foster Road, the location of his laundry mat. Our client met with a city planner to determine whether this relocation

would be a possibility. In August of 2007, our client received a letter from the City of Hallandale Beach stating that **a convenience store is a permitted use in the district**. This letter is attached hereto as Appendix A. In reliance on the letter received by the City, our client ceased the use of the laundry mat to begin the process of conversion to a convenience store. As such, our client closed the doors to the laundry mat in September, **after** receiving the letter from the City that the operation of a convenience store is a permitted use in this district.

As our client was moving forward in good faith with his plans to operate a convenience store at 637 Foster Road, he submitted plans to the City and a survey of the property in January. He subsequently received a letter from the City stating that the minimum required square footage required to operate a convenience store is 2000 square feet (the survey mistakenly showed 1986 square feet). This letter is attached hereto as Appendix B. Our client's surveyor and the City's engineer subsequently met at the site and determined the structure DID in fact meet the minimum 2000 square feet requirement.

With that issue behind him, our client rightfully believed he would be able to operate a convenience store in the very near future, and certainly before April 2008 when he was to vacate the 636 Foster Road premises. To his dismay, in early April, our client received a letter from Richard Cannone, the new Director of Development Services, dated April 9, 2008, which stated that by virtue of closing the laundry mat, our client had abandoned the nonconforming structure and hence, had lost its nonconforming status. This letter is attached hereto as Appendix C. This was the first time our client had ever been informed that the structure in which he desired to relocate his convenience store is a nonconforming structure.

We met with Richard and the Deputy City Attorney on April 23, 2008. The City's position, as we understand it, is that our client cannot reopen as a convenience store, or anything else, because he has, in effect, abandoned the nonconforming structure by the act of closing down the laundry mat.

I. City of Hallandale Beach.

The City of Hallandale Beach's land development regulations speak specifically to nonconforming structures. Section 32-926, entitled Nonconforming Structures states as follows:

Where a lawful structure exists at the effective date of adoption or amendment of this chapter, and it could not be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yards, location on the lot, or other property development standards or requirements concerning the structure, such structure, except as otherwise specifically provided, may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (1) Alteration, extension, enlargement, or expansion of nonconforming structure. No such **alteration**, extension,

enlargement, or expansion of a nonconforming structure **shall be permitted in a way which increases its noncompliance with present property development and use standards** of the zoning district in which it is located; but any nonconforming structure or portion **may be altered to decrease its noncompliance** with present property development and use standards of the zoning district in which it is located. Nothing in this subsection shall prohibit the director from ordering the compliance with all applicable building construction and safety related codes.

Our client's request to relocate his convenience store will in fact require a redesign of the internal portion of the building but, it will not by any stretch of the imagination alter, extend, enlarge or expand the nonconforming **structure** by **increasing** its noncompliance. As we understand the facts, this building is considered nonconforming due to the fact that the setback from the street is not as large as the setback requirement in the City's land development regulations. By virtue of redesigning the internal space for the convenience store, the structures setbacks are not being altered and hence our client is not proposing to expand or increase the nonconforming structure as our client is not proposing to alter the setbacks at all.

(3) *Repairs and maintenance of nonconforming structures.* Routine repairs and maintenance of nonconforming structures on fixtures, wiring or plumbing or on the repair or replacement of walls **shall** be permitted.

As stated above, our client intends to repair to the internal portion of the building which he plans to operate as a convenience store. These repairs are specifically permitted by the City of Hallandale Beach's land development regulations.

II. Florida Law.

By definition, a nonconforming use or structure is one in which the use or structure was legally permitted prior to a change in the law, and the change in law would no longer permit the re-establishment of such structure or use. *See e.g., JPM Inv. Group, Inc. v. Brevard County Bd. of County Commissioners*, 818 So. 2d 595 (Fla. 5th DCA 2002) citing Section 62-1181, Brevard County Code. As the Fifth District Court of Appeal noted in *Lewis v. City of Atlantic Beach*, 467 So. 2d 751, 754 (Fla. 5th DCA 1985),

[t]he application of zoning regulations to restrict an existing use of property, resulting in substantial diminishing of its value, may constitute a 'taking' by the governmental agency which requires the payment of compensation under

well-established principles of constitutional law...To avoid these consequences, zoning regulations generally 'grandfather' the continuation of existing nonconforming uses on property subject to the zoning classification. By the same token therefore, it is reasonable to conclude that the termination of such grandfathered nonconforming uses may result in a 'taking' for constitutional purposes unless the basis of such termination accords with applicable legal principles.

The City of Hallandale Beach's land development regulations also states in section 32-926(6):

Abandonment of nonconforming structure. The abandonment of a nonconforming structure for a period of 180 consecutive days shall render the nonconforming structure status of the specific nonconforming structure null and void.

Although Florida law and the City of Hallandale Beach's land development regulations prevents the re-establishment of a non-conforming use or structure when the use or structure itself has been discontinued or abandoned, Florida courts have held that the burden shifts to the local government to prove that the nonconforming use has been discontinued or abandoned. *Id.*

The discontinuance due to interference by the local government does not constitute abandonment. *See Crandon v. State ex rel. Uricho*, 28 So. 3d 159 (Fla. 1946) (holding that temporary closure of nonconforming airport due to war regulations did not constitute discontinuance of nonconforming use). The fact is, this convenience store would have been in operation prior to the 180 day reference in the code had the City been cooperative and had not intentionally withheld our client's right to operate a convenience store at this location. *See Lewis v. City of Atlantic Beach*, stating "Neither attrition nor abandonment occurs where a nonconforming use is interrupted or discontinued involuntarily by compulsion of governmental action."

In application of "discontinuance regulations," Florida law is clear that the owner's intent to abandon the use must be shown. In *Sarasota County v. Bow Point on Gulf Condominium Developers, LLC*, 974 So. 2d 431 (Fla. 2nd DCA 2007), the court held that a 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. Under the Sarasota 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.

Nonetheless, the court held that repairs and renovations do not trigger abandonment and discontinuance. Similarly, our client's 8-month interruption of for necessary repairs and renovations did not trigger discontinuance provision in the City of Hallandale Beach's land development regulations. Additionally, temporary cessation of a nonconforming use or the temporary vacancy of buildings used for the nonconforming use does not operate to effect abandonment of the nonconforming use. *See City of Miami Beach v. State*, 128 Fla. 118, 174 So. 443 (1937). Further, abandonment occurs when the landowner **intentionally** and voluntarily foregoes further nonconforming use of the property. *See Lewis v. City of Atlantic Beach*, 467 So. 2d 751 at 755. *See also Hobbs v. Department of Transportation*, 831 So. 2d 745 (Fla. 5th DCA 2002) holding that "temporary cessation of a nonconforming use does not operate to effect abandonment of the nonconforming use; instead, abandonment occurs when the landowner intentionally and voluntarily foregoes further non-conforming use of the property."

The Florida Supreme Court has held in the case of *City of Miami Beach v. State ex rel. Parkway Co.*, 174 So. 443 (Fla. 1937), that a use was not discontinued for the purpose of a Miami Beach ordinance if the use had been shut down for the purpose of renovations or repairs. This is exactly the purpose for which our client shut down the laundry mat, not to abandon the structure, but for the purpose of renovations. Further, the City of Hallandale was aware of our client's intent. As the City has the burden to prove the intent to abandon, the City will find it impossible to prove our client intended to abandon the structure when the plans for relocation were known.

III. Tenants Living on the Second Floor ... *Structure NOT Abandoned*

Lastly, in order to abandon a structure, the structure in its **entirety** must be abandoned. Again, this is the City's burden to prove. We find it impossible that the City can argue this structure has been abandoned when **there are residents living on the second floor of this structure.**

IV. Change of Tenancy Specifically Permitted in the City of Hallandale Beach's Land Development Regulations.

We think that it is imperative that we all understand that no one is arguing that a convenience store is a nonconforming "use." Having said that, Section 32-925, entitled Nonconforming Uses of Land states in pertinent part:

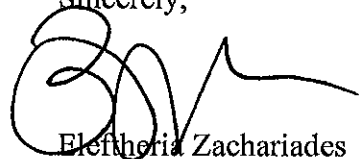
A nonconforming use may be continued if it lawfully existed on November 21, 1978, or at the time when the use was thereafter prohibited, subject to the following limitations and restrictions:

- (2) *Change of ownership or tenancy.* All rights and obligations associated with a nonconforming use of land **run with the land** and are not personal to the present owner or tenant of the nonconforming use of land and are not affected by a change in ownership or tenancy, except if abandoned.

The City of Hallandale Beach's land development regulations specifically permit the change of tenancy for a nonconforming use. Although our client's use is not a nonconforming use, it is important to point out that the City has contemplated the change of ownership or tenancy, and with that change they must also acknowledge that some time may pass between the closing of one use and the opening of the new use as permitted. This allotted time is for reconfiguration of the internal building to allow the new owner or tenant to have the layout of the store function for the new use. This reconfiguration takes time and by no means has the use or structure been abandoned by virtue of the need to reconfigure the internal layout.

We respectfully request that the City Commission approve this administrative appeal in favor of our client, and instruct the City of Hallandale to process our application and plans for commercial alterations and ultimately permit the operation of a convenience store at 637 Foster Road.

Sincerely,



Eleftheria Zachariades

Sammy Hasan

P. 1

954-839-7260

A



City of Hallandale Beach

August 20, 2007

400 South Federal Highway
Hallandale Beach, FL 33009-6433
Phone: (954) 458-3251
Fax: (954) 457-1342

Talib Jaber
119 Fox Meadow Run
Jupiter, FL 33458

RE: 637 Foster Road - Zoning Verification Letter

Legal Description: "Foster Park 21-13 B" Lots 18, 19, Block 2

File Number: 1221-18-0280

Dear Mr. Jaber:

The above referenced subject property located at 637 Foster Road is currently zoned Business Limited (B-L) District and is located in the Foster Road Overlay District.

A complete listing of allowable uses and development standards for the said property can be found in Section 32-159 of the Hallandale Beach City Code for the Business Limited District and in Ordinance 2003-15 for the Foster Road Overlay District. Copies are available at the City Clerk's Office located on the second floor of City Hall for fifteen cents per page or via the Internet at www.municode.com.

Please note that a convenience store / food store is permitted within the B-L District, however, the Foster Road Overlay District requires convenience stores to be a minimum of 2,000 square feet in Gross Floor Area.

Please feel free to contact me with any questions at (954) 457-1337.

Sincerely,

Robert Collins
Planner

cc: Christy Dominguez, Director of Planning and Zoning
File

Must submit an
- elevation certificate
- land survey
2,000 GFA



City of Hallandale Beach

B

March 21, 2008

Ameen Abdel
Stop and Pay Food Market
636 Foster Road
Hallandale Beach, FL 33309

400 South Federal Highway
Hallandale Beach, FL 33009-6433
Phone: (954) 458-3251
Fax: (954) 457-1342

RE: Interior Renovations and Relocation of Stop and Pay Market to
637 Foster Road, Hallandale Beach
Permit# 08-829

Dear Mr. Abdel:

Please be advised that our office has reviewed your application and plans for renovations at the above identified property.

Based on calculations from the signed and sealed drawings provided, staff has concluded that the Gross Floor Area of the subject property is 1,986 square feet. Pursuant to Section 32-159 of the City of Hallandale Beach Code of Ordinances the minimum requirement for a convenience store located in the Foster Road Overlay District is 2,000 square feet (see attached Zoning Verification letter dated August 20, 2007).

Due to this deficiency you are hereby notified that the City cannot approve these renovations to permit the operation of a convenience store. Permit #08-829 application is considered closed at this time.

Please have your contractor pick up the plans at their earliest convenience.

Should you require any further information please contact our office at (954) 457-1386.

Sincerely,

Richard D. Cannone
Director of Development Services

Cc: D. Mike Good, City Manager
Nydia Rafols-Sallabery, Deputy City Manager
David Jove, City Attorney
Christy Dominguez, Planning & Zoning Director
Tony Gonzales, Building Official

RDC/sj



City of Hallandale Beach

C

April 9, 2008

400 South Federal Highway
Hallandale Beach, FL 33009-6433
Phone: (954) 458-3251
Fax: (954) 457-1342

Ameen Abdel
637 Foster Road
Hallandale Beach, FL 33309

RE: Application Requirements
637 Foster Road Hallandale Beach, FL

Dear Mr. Abdel:

The Development Services Department has reviewed the plans submitted for commercial alterations for a Stop and Pay Food Market located at 637 Foster Road. In reviewing the status of your property, City staff has determined the existing structure is non-conforming. Article VII of the Hallandale Beach Zoning and Land Development Code, "Nonconformities", states the following:

The abandonment of a nonconforming structure for a period of more than 180 consecutive days shall render the nonconforming structure status of the specific nonconforming structure null and void.

The mere renewal and maintenance of an active occupational license, without more, shall not raise any presumption that the nonconforming use has not been abandoned.

As such, the subject property is now an illegal nonconforming structure. In addition, an Occupational License is required for any residential property with more than 3 units.

In order to bring this property back into legal status, you are required to complete the Minor Development Review process and comply with the Zoning and Land Development Code requirements for the B-L Zoning District, the Foster Road Corridor Overlay District, and the land use proposed. For those code requirements that cannot be met, a variance shall be required.

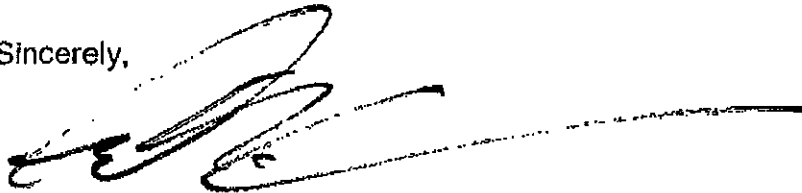
Attached is a Variance and Minor Development Review Application and checklist of the required material for submittal to the Planning and Zoning Department.

It is my recommendation you schedule a pre-application meeting with myself and Staff prior to your Minor Development Review application submittal to ensure that the necessary issues have been addressed.

Please be advised that your current building permit application will not be processed until the Minor Development and Variance requests are completed.

Should you have any further questions, please contact me at (954) 457-1375. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard D. Cannone', with a long horizontal flourish extending to the right.

Richard D. Cannone
Director, Development Services

cc: Nydia Rafols, Deputy City Manager
David Jove, City Attorney
Christy Dominguez, Director Planning and Zoning
Tony Gonzalez, Building Official