



Application No.:

V-2016-021(f)

Attachment "B"

Variance Application

1622 Investment Corp

VARIANCE

V-2016-021(f)

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A VARIANCE APPLICATION TO ARTICLE X. - OFF-STREET PARKING AND LOADING AREAS, **SEC. 3-147 OF THE TOWN CODE RELATING TO OFF-STREET LOADING REQUIREMENTS** FOR 1622 INVESTMENT CORP GENERALLY LOCATED SOUTHWESTERLY OF CARIBBEAN BOULEVARD AND U.S. 1 EXTENDING A DISTANCE OF 917.27 FEET (FOLIO NOS. 36-6007-000-0333, 36-6007-000-0334, 36-6007-000-0330, 36-6007-000-0336); AND PROVIDING FOR AN EFFECTIVE DATE.



Community Development Department
10720 Caribbean Boulevard, Suite 120
Phone: 305-234-4262 Fax: 305-234-4251

ZONING, VARIANCE, SPECIAL EXCEPTION, ADMINISTRATIVE WAIVER, AND/OR UNUSUAL USE APPLICATION

LIST ALL FOLIO #S: 36-6007-000-0333; 36-6007-000-0334; 36-6007-000-0330; 36-6007-000-0336

DATE RECEIVED: _____

- 1. NAME OF APPLICANT** (Provide complete name of applicant, exactly as recorded on deed, if applicable. If applicant is a lessee, an executed 'Owner's Sworn-to-Consent' and copy of a valid lease for 1 year or more is required. If the applicant is a corporation, trust, partnership, or like entity, a 'Disclosure of Interest' is required).

Ben Fernandez, Esq., on behalf of 1622 Investment, Corp.

2. APPLICANT'S MAILING ADDRESS, TELEPHONE NUMBER:

Mailing Address: 200 South Biscayne Boulevard

City: Miami State: FL Zip: 33131 Phone#: 305-377-6235

3. OWNER'S NAME, MAILING ADDRESS, TELEPHONE NUMBER:

Owner's Name (Provide name of ALL owners): 1622 Investment Corp.

Mailing Address: 655 West Flagler Street, Suite 201

City: Miami State: FL Zip: 33130 Phone#: _____

4. CONTACT PERSON'S INFORMATION:

Name: Ben Fernandez Company: Bercow Radell & Fernandez, PLLC

Mailing Address: 200 South Biscayne Boulevard, Suite 850

City: Miami State: FL Zip: 33131

Phone# 305-377-6235 Fax# 305-377-6222 E-mail: BFernandez@BRZoningLaw.com





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5. LEGAL DESCRIPTION OF ALL PROPERTY COVERED BY THE APPLICATION

(Provide complete legal description, i.e., lot, block, subdivision name, plat book & page number, or metes and bounds. Include section, township, and range. If the application contains multiple rezoning requests, then a legal description for each sub-area must be provided. Attach separate sheets, as needed).

See attached Exhibit A.

6. ADDRESS OR LOCATION OF PROPERTY (For location, use description such as NE corner of, etc.)

The property is located on the west side of South Dixie Highway south of Caribbean Boulevard (SW 203rd Street)

between US 1 and the South Miami Dade busway.

7. SIZE OF PROPERTY (in acres): 1.05 (divide total sq. ft. by 43,560 to obtain acreage)

8. DATE property ☒ acquired ☐ leased: Sept. 2015 9. LEASE TERM: _____ Years
 (Month & year)

10. IF CONTIGUOUS PROPERTY IS OWNED BY THE SUBJECT PROPERTY OWNER(S), provide Complete legal description of said contiguous property.



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11. Is there an option to purchase ☐ or lease ☐ the subject property or property contiguous thereto?

☒ no ☐ yes (if yes, identify potential purchaser or lessee and complete 'Disclosure of Interest' form)

12. PRESENT ZONING CLASSIFICATION: TC

13. APPLICATION REQUESTS (check all that apply and describe nature of the request in space provided) (DBC's require special exception to permit site plan approval unless rezoning 3 acres or less to residential categories)

☐ District Boundary Changes (DBC) (Zone class requested): _____

☐ Unusual Use: _____

☒ Variance: Variance from the requirements of Section 3-147 of the Town Code relating to off-street loading requirements, as applicable. Please refer to the Letter of Intent for more details.

☐ Alternative Site Development (PUD): _____

☐ Special Exception: _____

☐ Administrative Waiver: _____

☐ Modification of previous resolution/plan: _____

☐ Modification of Declaration or Covenant: _____

☐ Other: _____

14. Has a public hearing been held on this property within the last year & a half? ☒ No ☐ Yes.

If yes, provide applicant's name, and date, purpose and results of hearing, and resolution number.



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15. Is this hearing is as a result of a violation notice? ☒ No ☐ Yes. If yes, give name to whom the Violation notice was served: _____ and describe the violation:

16. Describe structures on the property: _____ 2,280 square-foot retail building

17. Is there any existing use on the property? ☐ No ☐ Yes. If yes, what use and when established?

Use: _____ Retail _____ Year: _____

18. Submitted Materials Required:
Please check all that Apply:

- ☒ Letter of intent
- ☐ Justifications for change
- ☐ Statement of hardship
- ☐ Proof of ownership or letter from owner
- ☐ Power of attorney
- ☐ Contract to purchase
- ☐ Current survey (1 original sealed and signed/ 1 reduced copy at 11" x 17")
- ☐ (12) Copies of Site Plan and Floor Plans
- ☐ (1) Reduced copy at 11"x 17"
- ☐ 20% Property owner signatures (If required)
- ☒ Mailing Labels (3 sets) and map (If required)
- ☐ Required Fee(s)





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APPLICANT'S AFFIDAVIT

The Undersigned, first being duly sworn depose that all answers to the questions in this application, and all supplementary documents made a part of the application are honest and true to the best of (my)(our) knowledge and belief. (I)(We) understand this application must be complete and accurate before the application can be submitted and the hearing advertised.

OWNER OR TENANT AFFIDAVIT

(I)(WE), N/A, being first duly sworn, depose and say that (I am)(We are) the ☐ owner ☐ tenant of the property described and which is the subject matter of the proposed hearing.

Signature

Signature

Sworn to and subscribed to before me
This _____ day of _____, _____

Notary Public: _____
Commission Expires: _____

CORPORATION AFFIDAVIT

(I)(WE), Eduardo Rodriguez, of 1622 Investment Corp., being first duly sworn, depose and say that (I am)(We are) the ☐ President ☐ Vice-President ☐ Secretary ☐ Asst. Secretary of the aforesaid corporation, and as such, have been authorized by the corporation to file this application for public hearing; and that said corporation is the ☐ owner ☐ tenant of the property described herein and which is the subject matter of the proposed hearing.

Attest: _____

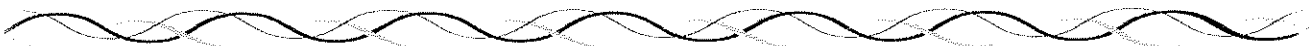
Authorized Signature

Office Held

(Corp. Seal)

Sworn to and subscribed to before me
This _____ day of _____, _____

Notary Public: _____
Commission Expires: _____





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PARTNERSHIP AFFIDAVIT

(I)(WE), N/A, being first duly sworn, depose and say that (I am)(We are) partners of the hereinafter named partnership, and as such, have been authorized to file this application for a public hearing; and that said partnership is the ☐ owner ☐ tenant of the property described herein which is the subject matter of the proposed hearing.

By _____ %
 By _____ %

 (Name of Partnership)

By _____
 By _____

Sworn to and subscribed to before me
 This _____ day of _____, _____

Notary Public: _____
 Commission Expires: _____

ATTORNEY AFFIDAVIT

I, Ben Fernandez, being first duly sworn, depose and say that I am a State of Florida Attorney at Law, and I am the Attorney for the Owner of the property described and which is the subject matter of the proposed hearing.

 Signature

Sworn to and subscribed to before me
 This 5 day of June, 2018

Notary Public: _____
 Commission Expires: _____





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RESPONSIBILITIES OF THE APPLICANT

I AM AWARE THAT:

1. The Department Environmental Resources Management (DERM), and other agencies review and critique zoning applications which may affect the scheduling and outcome of applications. These reviews may require additional public hearings before DERM's Environmental Quality Control Board (EQCB), or other boards, and /or the proffering of agreements to be recorded. I am also aware that I must comply promptly with any DERM conditions and advise this office in writing if my application will be withdrawn.
2. Filing fees may not be the total cost of a hearing. Some requests require notices to be mailed to property owners up to a mile from the subject property. In addition to mailing costs, fees related to application changes, plan revisions, deferrals, re-advertising, etc., may be incurred. Application withdrawn within 30 days of the filing are eligible for a refund of 25% of the hearing fee but after that time hearings withdrawn or returned will be ineligible for a refund. I understand that fees must be paid promptly.
3. The South Florida Building Code requirements may affect my ability to obtain a building permit even if my zoning application is approved; and that a building permit will probably be required. I am responsible for obtaining permits and inspections for all structures and additions proposed, or built without permits. And that a Certificate of Use and Occupancy must be obtained for the use of the property after it has been approved at Zoning Hearing and that failure to obtain the required permits and/or Certificates of Completion or of Use and Occupancy will result in enforcement action against any occupant and owner. Submittal of the Zoning Hearing application may not forestall enforcement action against the property.
4. The 3rd District Court of Appeal has ruled that zoning applications inconsistent with the Comprehensive Development Master Plan (CDMP) cannot be approved by a zoning board based upon considerations of fundamental fairness. Therefore, I acknowledge that if the hearing request is inconsistent with the CDMP and I decide to go forward then my hearing request can only be denied or deferred, but not approved.
5. In Miami-Dade County v. Omnipoint Holdings, Inc. Case No. 3d01-2347 (Fla. 3rd DCA 2002), the 3rd District Court of Appeal has held invalid the standards for non-use variances, special exceptions, unusual uses, new uses requiring a public hearing and modification of covenants. This is not a final decision and the County Attorney's Department professional staff to develop new standards that will address the Court's concerns. While the new standards are being developed, applicants are advised that any non-use variance, special exception, unusual use, new use requiring a public hearing or request for modification of covenants granted under the existing standards are subject to being reversed in the courts. An applicant wishing to avoid the substantial legal risks associated with going forward under the existing standard may seek a deferral until the new standards are developed.



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6. Any covenant to be proffered must be submitted to the Town of Cutler Bay Legal Counsel, on Town form, at least 1 month prior to the hearing date. The covenant will be reviewed and the applicant will be notified if changes or corrections are necessary. Once the covenant is acceptable, the applicant is responsible to submit the executed covenant with a current 'Opinion of Title' within 1 week of the hearing. And that Legal Counsel must carry a cover letter indicating subject matter, application number and hearing date.
7. The Town of Cutler Bay Department of Public Works reviews and critiques Zoning applications and may require conditions for approval.
8. **THE APPLICANT IS RESPONSIBLE FOR TRACKING THE STATUS OF THE APPLICATION AND ALL HEARINGS THAT MAY BE ASSOCIATED WITH THIS APPLICATION.**


 (Applicant's Signature)

Sworn to and subscribed before me this 5 day of June, 2018.
 Affiant is personally known to me or has produced _____ as
 identification.


 (Notary Public)

My Commission Expires: _____





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COST RECOVERY AFFIDAVIT

I hereby acknowledge and consent to the payment of **all applicable fees** involved as part of my application process. These fees include but are not limited to: application fees, postage, advertising, and attorney fees **regardless of the outcome of the public hearing.**

Please type or print the following:

Date: _____ Public Hearing No. _____

Full Name:

Mr. Mrs. Ms. _____

Current Address: _____ City: _____

State: _____ Zip: _____ Telephone Number (____) _____

Date of Birth: _____

Signature

SWORN AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____ 20 16

Notary Public, State of Florida at Large

My Commission expires _____ 20 _____

Pursuant to Ordinance No. 2000-09-33-Cost Recovery

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Exhibit A

LEGAL DESCRIPTION:

The land referred to herein below is situated in the County of Miami-Dade, State of Florida, and is described as follows:

PARCEL 1:

A Parcel of land lying in the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 7, Township 56 South, Range 40 East, Miami-Dade County, Florida, Being Particularly described as follows:

Commence at the Southwest corner of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 7; Thence run S00°07'19"E along the West boundary of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 7 for a distance of 485.24 feet to the Point of Intersection with the Northwestern Right-Of-Way boundary of State Road No. 5; Thence run N42°15'01"E along the last described line for a distance of 910.00 feet to the Point of Beginning of the Parcel of land hereinafter to be described; Thence on the last described course for a distance of 172.27 feet to a Point; Thence run N47°44'59"W for a distance of 50.00 feet to the Point of Intersection with the Southeastery Right-Of-Way boundary of the Florida East Coast Railway; Thence run S42°15'01"W along the last described line a distance of 172.27 feet to a point, said point being 855.19 feet Northeasterly as measured along Southeastery Right-Of-Way boundary of said Florida East Coast Railway from the West boundary of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 7; Thence run S47°44'59"E a distance of 50.00 feet to the Point of Beginning.

PARCELS 2 AND 3:

A Parcel of land lying in the NE $\frac{1}{4}$ of Section 7, Township 56 South, Range 40 East, Miami-Dade County, Florida, more particularly described as follows:

Commence at the Northwest corner of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 7; Thence run S00°07'19"E along the Westerly line of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 7 for a distance of 411.05 feet to a point on the Southeastery Right-Of-Way line of the Florida East Coast Railroad; Thence run N42°15'01"E along the Southeastery Right-Of-Way line of the Florida East Coast Railroad for a distance of 1332.46 feet to the Point of Beginning of the parcel of land herein described; Thence continue along the last mentioned course, (The Southeastery Right-Of-Way of Florida East Coast Railroad) for a distance of 440 feet to a point on the South Right-Of-Way Line of Caribbean Blvd.; Thence run S47°44'59"E for a distance of 50 feet to a point of the Northwestern Right-of-Way Line of State Road No. 5 (U.S. Highway No. 1); Thence run S42°15'01"W along the Northwestern Right-of-Way line of said State Road No. 5 for a Distance of 440 feet to a point; Thence run N47°44'59"W for a distance of 50 feet to the Point of Beginning;

Less that Portion of the above-described property deeded to Miami-Dade County, Florida which is more particularly described as follows:

That Area Bounded by the Northwestern Right-Of-Way Line of State Road No. 5 (US No. 1) as shown on State Road Right-Of-Way Map in the NE $\frac{1}{4}$ of Section 7, Township 56 South, Range 40 East, and recorded in Plat Book 83, at Page 51, of the Public Records of Miami-Dade County, Florida, and bounded by the Southwesterly Right-Of-Way of Caribbean Boulevard as shown on the Right-Of-Way Deed, dated October 16, 1957 and recorded in Official Records Book 2195, at Page 436, of the Public Records of Miami-Dade County, Florida, and bounded by 25 foot radius arc concave to the West, said arc being tangent to Both of the Last Described Lines.

PARCEL 4:

A Parcel of land lying in the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 7, Township 56 South, Range 40 East, Miami-Dade County, Florida, more Particularly described as follows:

Commencing at the Northwest corner of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 7; thence run S00°07'19"E along the Westerly line of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 7, a distance of 411.05 feet; Thence run N42°15'01"E along the Southeastery Right-Of-Way line of the Florida East Coast Railway a distance of 1027.46 feet to the Point of Beginning of the Parcel of land hereinafter to be described; Thence continue along the last mentioned course, along the Southeastery Right-Of-Way of the Florida East Coast Railway a distance of 305 feet; Thence run S47°44'59"E for a distance of 50 feet to a Point on the Northwestern Right-Of-Way line of State Road No. 5, also known as Dble Highway; Thence run S42°15'01"W along the Northwestern Right-Of-Way line of said State Road No. 5, a distance of 305 feet; Thence run N47°44'59"W for a distance of 50 feet to the Point of Beginning.



BERCOW RADELL FERNANDEZ & LARKIN

ZONING, LAND USE AND ENVIRONMENTAL LAW

Direct: 305-377-6235
E-Mail: BFernandez@BRZoningLaw.com

VIA HAND DELIVERY

June 5, 2018

Kathryn Lyon AICP CFM
Town of Cutler Bay
10720 Caribbean Boulevard, Suite 105
Cutler Bay, FL 33189

Re: Property Located at Approximately SW 203rd Street and US-1

Dear Ms. Lyon:

This law firm represents 1622 Investment Corp., the property owner in relation to the reference property. This letter shall serve as the applicant's supplemental letter of intent in support of an additional variance from the Town of Cutler Bay Land Development Regulations ("Code") to allow development of the property in accordance with the revised enclosed plans prepared by Rammos Martinez Architects.

In addition to the previously requested variances, the Applicant hereby requests a variance from the requirements of Section 3-147 of the Town Code relating to off-street loading requirements, as applicable. Given the narrowness of the Property and the site constraints, the variance from Section 3-147 is justified and will allow the Applicant reasonable use of the Property. In addition, applicant intends to limit loading hours to before 9:00 AM and after 6:00 PM. In this way, loading will not be incompatible with the operation of the center.

In response to the requirements of the Code for a variance the Applicant states:

1. The particular provision of the code that prevents the proposed construction is Section 3-147.

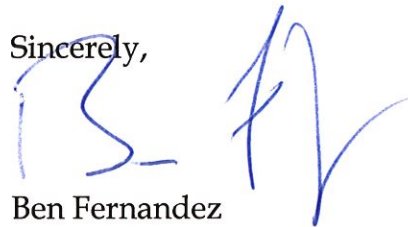
Kathryn Lyon AICP CFM
June 5, 2018
Page 2

2. The existing zoning of the property is Town Center (TC) Core and there are no prior development approvals for the property;
3. The special circumstances, conditions or characteristics of the land in support of the variance is that the property is presently developed with the building that the applicant intends to improve, while also accommodating new development on the site.
4. If the proposed were to comply with the typical code provision, the amount of developable floor area would be decreased. In addition, the buildings would be rendered impractical for the proposed commercial use for which the property is presently zoned.

Based on the unique circumstances applicable to the property, and the commercial character of the adjacent properties, the applicants proposed plan and the requested variance would maintain the intended purpose of the applicable TC zoning regulations, and the general welfare, stability and appearance of the immediate area. In addition, the project will be compatible with the surrounding land uses, and with the Cutler Bay Comprehensive Plan.

For the foregoing reasons we hereby request your favorable review and recommendation.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ben Fernandez', with a stylized flourish at the end.

Ben Fernandez

BF/bl
Enclosures