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Bashar, LLC – Variance Written narrative in Support of Application

Introduction: This site at 1741 N. Dixie Highway, was developed when this property was not in the City of Pompano Beach, but was in the unincorporated area of north Broward County.

It was built under the supervision of Broward County, not the City of Pompano Beach, and the property was later annexed into the City of Pompano Beach during the Kendall Green annexation. As such, it is protected by certain language in the State House Annexation Bill, which has similar language prevalent in the Pompano Beach annexation bill for Cresthaven and the Pompano Highlands. See the insert for the applicable paragraph which indicates that once the property comes into the City, and has a specific use and a particular confirmation, later changes in the zoning code by the City may not be applicable. Below is a portion of House Bill 1779, and Applicant refers to section 4 subparagraph 3 which states:

Notwithstanding subsections (1) and (2), any use, building, or structure that is legally in existence at the time that the Cresthaven Area (substitute title of the Bill annexing Kendall Green into the City) becomes a part of the municipality, (in this case the City of Pompano Beach) said use shall not be made a prohibited use by the municipality, on the property of said use, for as long as the use shall continue, and not be voluntarily abandoned.

Nonetheless, City staff has suggested that the change in the zoning code which took place in January 2013, changed the requirements for both lot size and frontage for gas stations. The new minimal size requires a lot of 200' x 200' with a minimum of 30,000 square feet. This particular site was fully permitted and constructed back in the early 1960s, and as the exhibits show, it has lawfully operated through to the present date. It has always been comprised of a gasoline filling station with three dispenser pumps and a convenience store. See Exhibit A aerials.

Now this variance request does not involve the convenience store which is on the same property, but due to the initial size of the two lots, the property is 150' on one side and 110' on the other side, and comprises approximately 15,918 square feet. See Exhibit B survey and site plan.

Thus, the dimensionality is different from the new code. Had it not been for the new code, the client who has leased the property for some 20 years, and closed on its purchase in July 2020, would have no problem as the owner is changing from a Marathon station brand to an Amoco branding, which is the present plan, and will have new signage and new pumps. The property currently enjoys a number of State-issued licenses and Broward County Environmental permits and licenses (Exhibit C).

The City is requiring the new zoning code applies as to size and frontage. Now, the zoning code was changed due to the fact that newer gas stations have 8, 12, as many as 20 or more pumps. Examples are the Racetrack station on the 500 block of W. Atlantic Blvd., the Racetrack station on the 3300 block of N. Federal Highway, and the Wawa station at 3600 N. Federal Highway. These new stations have many, many pumps and actually require a larger site, and must have the minimum 200' x 200' dimensionality.

With this particular application, if the variance is granted, this site shall be limited by this application, and by its past use for more than 60 years at this site, to the original three fuel dispensing pumps. This will be a three pump station.

So this variance application is requesting to allow this station to continue in business, as a small size or "petite" filling station, which it has been since it was originally constructed.

Applicant has invested more than \$1 million in this site, along with the infrastructure which is currently permitted, and which is underground and services these pumps, and the convenience store. If this variance is granted, the whole site including all landscaping, driveways, the convenience store, pumps and all canopies and all of the other items will be new, and be branded Amoco.

This property is at the corner of N. Dixie Highway and NW 17th Court which is the entrance into Kendall Green. Under previous ownership, the station has not looked its best. Under the new ownership, this owner will put many more tens of thousands of dollars into this site once he receives the relief from the ZBA, which he is hoping to obtain in this variance.

As stated above, this will not be a multi-fuel dispensing pump station, it will only have its original three pumps, and therefore, no undesirable impact will occur to any of the properties around it, nor their value, nor the access for the public either

entering the property or leaving the property. With only three pumps, only two cars can actually receive fuel service at the same time.

It cannot be over-emphasized here that this is a diminutive location, and therefore the request for the variance is the most minimum and least impactful that the owner can present in this application. Most variance petitions are requesting some change to an existing site, not so in this case. If this variance is granted, there will be no change to the usage or intensity on this site, simply an improvement in equipment (dispenser pumps) and ascetic improvements. These extraordinary and exceptional conditions of narrowness and shallowness pertaining to this site for which this variance is sought do not generally apply to other lands or structures in the vicinity.

Looking at the requisites, which are A-H, under §155.2420, the Applicant will state:

- a. There are extraordinary and exceptional conditions (such as topographic conditions, narrowness, shallowness, or the shape of the parcel of land) pertaining to the particular land or structure for which the Variance is sought that do not generally apply to other lands or structures in the vicinity;**

Basically as stated above, this site is narrow and shallow and has been so for more than the 60 years it has operated at this site, having come into the City during annexation but having been built under Broward County rules and procedures governing planning and zoning at the time it was constructed in the 1960s.

- b. The extraordinary and exceptional conditions referred to in paragraph a., above are not the result of the actions of the landowner;**

The owner has leased the property for some 20 years under the pre-2013 zoning code, and this issue only arose because of the City's action, not the Applicant's action in changing that code. The new code contemplates, as stated above, very large and massive multi-pump service filling stations which this site is not, and in no way will accommodate more than the three individual pumps which it has enjoyed since its inception over 60 years ago. The Applicant had nothing to do with the change in the zoning ordinance or the actual size and dimensionality of the facility which has not changed in more than 60 years.

- c. Because of the extraordinary and exceptional conditions referred to in paragraph a., above, the application of this code to the land or structure for which the variance is sought would effectively prohibit or unreasonably restrict the utilization of the land or structure and result in unnecessary and undue hardship;**

The unreasonable restriction comes from the fact that the new code, post-2013, is being applied to a site that had existed for more than 60 years, and was lawfully designed, constructed and permitted under both County and City preexisting zoning codes. The property's value would be substantially and severely diminished if the gasoline dispensing use were prohibited by the City's new zoning code, and the Applicant would stand to lose hundreds of thousands of dollars if this relief is not provided for through the use of this zoning variance application. The underground tanks and piping are State and County environmentally supervised and installed infrastructure which consists of tanks, pipes, valves and other mechanisms which directly supply the new dispensing units, once the units are installed over them. To lose this investment would mean an extreme hardship on the Applicant.

d. The variance would not confer any special privilege on the landowner that is denied to other lands or structures that are similarly situated;

It is believed this is the oldest continuous filling station in the City of Pompano Beach. The Applicant's manager/member of its limited liability company was born and raised in Pompano, and has lived here his whole life, and together with undersigned counsel, has attempted to search out the record keeping for gasoline filling stations on Pompano, and this station and one at the intersection of Atlantic Blvd. and Federal Highway, appear to be the two oldest and remaining filling stations within the City. The one on Atlantic Blvd. and Federal Highway is an extremely busy intersection and corner, unlike this particular property at the intersection of 1741 N. Dixie Highway and NW 17th Court, which does not have the traffic flow and intensity at Atlantic and Federal, due to the fact that NW 17th Court comes from Dixie Highway and turns into a residential area, and unlike the Federal Highway site. The property due east of this site and across the street on Dixie Highway, is the FEC Railroad tracks, and further east is the City's Sand & Spur Stables and east of that the Pompano Air Park. There is no access from the east to this property, only north and south access along Dixie Highway and access from the west on NW 17th Court. Thusly, the traffic flow and intensity at this corner is far less than the other Federal and Atlantic site, and the granting of this variance will in no way effect any other lands in the City for this particular use as no other lands have the historical history, context and privilege which this property currently has and uses for more than 60 years.

e. The extent of the variance is the minimum necessary to allow a reasonable use of the land or structure;

If the variance is granted, there will not be any change of use which has not already occurred and has continued to occur, both pre-2013, (dating back to the 1960s) and post-code up to the present date. There will be no change in intensity, and in fact the change will be positive as this property will be restored

and brought up to current ascetic conditions, which will make this corner much improved over its late history, and the variance is the very minimum variance which will be sought (the conditions will be the same, there will not be increased intensity or increased size).

f. The variance is in harmony with the general purpose and intent of this code and preserves its spirit;

If the variance is granted, all aspects of the code, including §155.4219 *Commercial: Motor Vehicle Sales and Service Uses* of the new code (post 2013) will be complied with in every aspect with the exception of dimensionality. Here again, the Applicant is conditioning this variance by itself, and limiting it to only three dispensers and not the multiple dispensers which are allowed on the other 200' x 200' sites. This site will comply with §155.4303 *Standards for Specific Accessory Structures*, under section E *Canopy and Vehicular Area Use*, and will comply with all of the necessary requirements of the City codes, including the development of the canopy, signage, driveways and parking area, and new landscaping. If the variance is granted, not only will the intent and spirit of the code will be maintained, this property will look remarkably better than it has in several decades.

g. The variance would not adversely affect the health or safety of persons residing or working in the neighborhood, be injurious to property or improvements in the neighborhood or otherwise be detrimental to the public welfare;

If the variance is granted, this property will be much more visually appealing to the local residents who travel north and south on Dixie Highway, and use NW 17th Court to turn into Kendall Green. The revised site, with all of its new conditions, will be a tremendous upgrade, both functionality and ascetically to the residential neighbors to the west of this site who use NW 17th Court. There will be no adverse effect whatsoever to any member of the public or to their health or safety, to the neighborhood, and will not be injurious to the neighborhood or detrimental to the public welfare. All efforts are scrutinized for this site by three public agencies: 1) State of Florida Department of Environmental Protection and the Department of Agriculture who supervises gas stations; 2) Broward County Environmental Protection and Growth Management Department; and 3) the City of Pompano Beach's own codes.

h. The variance is consistent with the comprehensive plan.

The comprehensive plan shows this property to be commercial, and that is the underlying land use and it is certainly compatible with the comprehensive plan,

and more importantly, it is compatible with the existing zoning, which is B-3, which specifically allows and permits gasoline stations such as this one with a convenience store on corners similar and identical to this particular site.

In closing, granting this variance relief, will cause no change in intensity, but will have a great effect on the functionality and use of this property, together with visual appeal and appreciation by those who traverse on North Dixie Highway and are residents of the Kendall Green area. This change in ownership which has brought about the Applicant's interest in further investment in this property, and its upgrading will serve to complement the residents of the Kendall Green area, which will be its primary customers and for their convenience. Applicant requests this variance be granted for this and the above stated reasons.

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