



July 27, 2021

To whom it may concern:

Re: Amended Variance narrative for Nelson's Diner, 438 S. Cypress Road

Please see the answers to the Variance review Standards.

#### **VARIANCE REVIEW STANDARDS**

A Variance application shall be approved only on a finding that there is competent substantial evidence in the record that all of the following standards are met:

*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;*

Answer: The building, a strip shopping center, composed of a number of individual units, was constructed in about 1958. At the time it was constructed, the front yard, rear yard and side yard setbacks in the City were remarkably different than they are today. In 1958, it appears that the rear setback was 15' and today the requirement is 30'. This particular building is long and narrow. The property line is 22.9 feet (east side). At the time of construction, the City required that an alleyway, which traverses from west to east on the north side of the property, runs to the original property line, and then turns 90° to the right, and commences along the back of the property south, exiting onto SE 6<sup>th</sup> Avenue, be dedicated to the City. This alleyway is a public alleyway, not a private alleyway, it is owned by the City of Pompano Beach. The approximate distance from the back wall of the building at 438 S. Cypress Road, to the alleyway is approximately 22.9 feet (see survey), and the alleyway is approximately 16 feet wide. This makes a total setback including the alleyway which at all times remains vacant and paved, of approximately 38.9 feet. A previous zoning variance was granted many years ago for a Dumpster pad and a fence surrounding the pad. Applicant's proposed walk-in cooler when built, will be

attached to the current building and not set off in an easterly direction from the east wall of the building like the current temporary shed is. This will bring the use closer to the building by approximately 10' and will therefore not interfere with any life safety or traffic issue concerning the use of the alleyway. The public very rarely uses the alleyway, it is more commonly used by delivery services to the various tenants on the east side (the rear) of the building. These demographics, clearly show that this building is subject to unusual topographic conditions of narrowness, shallowness an unusual shape, because most buildings in Pompano do not have a dedicated alleyway running along a northern side, and running along the entire east side.

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

Answer: Due to the fact the property was constructed in 1958, there have been many zoning changes since that date, all of the zoning changes concerning the depth of the rear setback, and the dedicated alleyway, have had to "interface" with the new zoning code, adopted in 2013 by the City. These changes create a "deficit on paper" to the actual setback which is currently less than 30' (about 7' less) to the rear setback line on the east side, adjacent to and adjoining the dedicated alleyway. This property was purchased by the current landowner in 1999, and no changes have been made to the footprint of the structure or to the alleyway. No square footage has been added to the building proper since its acquisition by the current owner. There has been City approved vinyl fencing screening the Dumpster, and fencing it in along the Dumpster pad which was an issue previously approved by the City's Zoning Board of Appeals due to the fact that the ordinances have changed over the years, and the City has for some time required that Dumpsters be enclosed and that Dumpsters be provided. The previous condition allowed the stacking of individual garbage cans behind such a business, but now all of the refuse is consolidated into a Dumpster which is now code compliant and sits in the rear setback of this property. A condition of the shallowness of the rear setback, which affects all of the businesses on the rear side of this building, facing the alleyway in an east direction, is not the fault or any result of the actions taken by the landowner or applicant, but is merely a transition of further changes in the zoning code as time has moved forward in the approximately last 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;*

Answer: In order to economically compete with other restaurants and diners, all restaurants and diners in the City, with respect to older properties, have from time to time been forced to add refrigeration on the outside of their principal structures. Changes in square footage requirements for minimum number of tables, has changed over the years as have Health Department standards, requiring superior refrigeration units with their super-insulated walls, are larger and take up more space. These refrigeration units have had to be consolidated, and placed outside (in this case the eastern exterior) of the

structures. Nelson's Diner currently has several portable storage units which have been in use for years, by both Nelson's and previous owners of the diner. These two variance requests are seeking permission to enclose and provide a walk-in cooler and to enclose on the east side, several refrigeration-like ice box type coolers, which are portably stationed next to the eastern exterior wall at the rear of the property, and will if the variance is granted, be upgraded, by the installation of a small replacement single unit which is permanently mounted and configured in compliance with the latest building codes and hurricane standards. Presently, several of those refrigeration units are on wheels and are only held to the wall with chains. Not only will this upgrade make this use more efficient, it will also make this use more aesthetically pleasing to the eye, as the multiple units will be replaced by a single unit on the north side, and the walk-in cooler on the east side, will replace four current temporary portable structures, and one fixed structure. Hence, the east side will be all consolidated into one specific refrigeration unit on the north side and on the east side the walk-in cooler will be affixed to the west face of the rear of the building, and will be incorporated pursuant to the building codes, as a refrigeration accessory use, as a walk-in cooler. Thus, as stated above, a group of individual cooling and storage units will be eliminated. The use of the land will not change.

The current zoning is B-3, which allows these uses. Nelson's Diner currently receives deliveries 5 days a week, and is committed to beautifying any permitted work allowed by the City to enhance the appearance for its residents, pedestrians and particularly its clientele. This upgrade will cost Nelson's tens of thousands of dollars, and will also increase the efficiency of Nelson's operation and the aesthetics for surrounding properties and the neighboring businesses in the same shopping center. The new equipment will be updated electrically and electronically, and will run much quieter and will be remarkably superior to what is there today if a variance is granted. Without the relief afforded by this variance application, both the landowner and the applicant business/Nelson's Diner would be effectively prohibited and unreasonably restricted with the utilization of the land, and structure, and constitute an undue hardship. This hardship, once again stated, is not the result of any action by Nelson's Diner or the owner, but simply a hardship by virtue of the change in the zoning requirements over the 60-year period that this facility has existed at this location. In this case, it is not like a setback is not being provided, due to the fact that there is approximately 23' of the 30' required for the setback, but in this case, the setback does not touch a neighbor's property line by the alleyway border. The City's dedicated alleyway, which is acquired from the original developer, provides that additional buffer which makes this an unusual case, and 39' of setback are being actually provided, when you count the setback of the building from its wall to the western side of the alleyway, and then add in the width of the alleyway.

Without this relief, as requested, the constrictions of operating a business entity successfully at this site, for any tenant, whether it is this applicant or not, would be so restrictive as that operation would become prohibitive and unreasonably restricted. This is an unintended consequence by the City, changing its zoning requirements from time to time, but has caught this particular property and this particular family diner, in a catch-22 type posture. The conditions are not the conditions brought on by the applicant or the

owner, but simply the progression of time and the change of law for which relief by variance is wisely provided by the framers of our City code.

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

Answer: As stated above, the existing portable coolers and structures will be removed and all will be consolidated into one small stand-alone refrigeration/cooler on the east side, and one larger walk-in code compliant storage cooler on the east side, on the east building wall under the overhang of the existing building. Neither of these structures, pertaining to these two variance requests, will impinge upon public properties or land, or the alley but particularly with the rearward use, will eliminate the current shed and the current shed over the ice machine, consolidating those, and bringing them further west in providing a deeper setback than currently is afforded by the present 60-year-old building. By investing in these long-term improvements, the refrigeration at this diner will be substantially updated, be more attractive, will run more efficiently, draw less electricity, will be insulated in a superior manner, and provide a cleaner look, all the same respecting the rear setback in providing additional square footage for the same, when compared with the current arrangement.

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

Answer: The requested variance is the very minimal variance, which will allow both of these structures to be integrated into this property as mentioned above. When the building, some 60 years ago, was erected, and the setback at that time was 15' already lawfully established. The new 2013 code does not make allowance for older preexisting structures, and therefore, relief for the business and property owner are being requested to facilitate this substantial upgrade, which will result in an upgrade to the community and neighbors, and an upgrade to the personnel who work at this facility, and to its patrons and customers. The proposed walk-in cooler will be placed on private property, within the current 23' setback provided in the 1960s, 7' more setback than was required at that date.

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

Answer: These proposed improvements will be completed in a first-class manner and bring value to the land. Both City and landowner will be pleased with the end result.

*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;*

Answer: There are or will be no health risks associated with this request. Nelson's Diner will be adding value to the building and business. Building the permanent enclosed

structure will be hurricane rated, and will not become a possible hazard if a hurricane does hit Pompano Beach.

h. The variance is consistent with the comprehensive plan.

Answer: Yes, commercial.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Grant Galuppi', with a stylized, cursive script.

Grant Galuppi  
Nelson's Diner