



**SPECIAL MEETING OF THE
CITY OF CONCORD
PLANNING COMMISSION**

*****Please note special meeting date*****

**Monday, May 2, 2016
6:30 p.m. – Council Chamber
1950 Parkside Drive, Concord**

Planning Commission Members:
Carlyn Obringer, Chair
Jason Laub, Vice Chair

LaMar Anderson, Commissioner
Ray Barbour, Commissioner

**SPECIAL MEETING
6:30 p.m. – Council Chamber**

I. ROLL CALL

II. PLEDGE TO THE FLAG

III. PUBLIC COMMENT PERIOD

IV. ADDITIONS / CONTINUANCES / WITHDRAWALS

V. CONSENT CALENDAR

1. [4/20/16 Meeting Minutes](#)

VI. PUBLIC HEARINGS

1. [2799 Clayton Road Appeal](#) (PL16125 – AC) – Appeal from the Nootbaar Charitable Remainder Unitrust (“Nootbaar Crut”) of a Zoning Interpretation by the Community and Economic Development Director of Concord Development Code Section 18.530.040 regarding non-conforming uses, with respect to a convenience store with alcohol sales. The Planning Commission’s consideration of and action on the Appeal does not constitute a “project” within the meaning of Public Resources Code Section 21065, 14 Cal Code Regs. Sections 15060(c)(2), 15060(c)(3), or 15378 because it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Even if such activities did constitute a project under the CEQA, staff believes the activities fall within the “common sense” CEQA exemption set forth in 14 Cal Code Regs. Section 15061(b)(3). Even if the activities did not qualify for the common sense exemption, they are exempt from CEQA pursuant to CEQA Guidelines Sections 15301 (Existing Facilities), 15302 (Replacement or Reconstruction), and 15303 (New Construction or Conversion of

Small Structures). **Project Planner: Laura Simpson @ (925) 671-3369**

VII. COMMISSION CONSIDERATIONS

VIII. STAFF REPORTS / ANNOUNCEMENTS

IX. COMMISSION REPORTS / ANNOUNCEMENTS

X. FUTURE PUBLIC HEARING ITEMS

XI. ADJOURNMENT

NOTICE TO PUBLIC

ADA ACCOMMODATION

In accordance with the Americans With Disabilities Act and California Law, it is the policy of the City of Concord to offer its public programs, services and meetings in a manner that is readily accessible to everyone, including those with disabilities. If you are disabled and require a copy of a public hearing notice, or an agenda and/or agenda packet in an appropriate alternative format; or if you require other accommodation, please contact the ADA Coordinator at (925) 671-3021, at least five (5) days in advance of the hearing. Advance notification within this guideline will enable the City to make reasonable arrangements to ensure accessibility.

APPEALS

Decisions of the Planning Commission on use permits, variances, major subdivisions, appeals taken from decisions of the Zoning Administrator or staff interpretations of the Zoning Code may be appealed to the City Council. Appeals and the required filing fee must be filed with the City Clerk within ten (10) days of the decision.

If you challenge any of the foregoing described actions in court, an appeal first of said actions to the Zoning Administrator, Planning Commission, and/or City Council (as applicable) in the manner and within the time period established in Development Code Chapter 18.510 (Appeals and Calls for Review) is required, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Zoning Administrator and/or Planning Commission (as applicable) at, or prior to, said public hearing.

APPLICANT'S SUBMITTAL OF INFORMATION

Submittal of information by a project applicant subsequent to the distribution of the agenda packet but prior to the public hearing may result in a continuance of the subject agenda item to the next regularly scheduled Planning Commission meeting, if the Commission determines that such late submittal compromises its ability to fully consider and evaluate the project at the time of the public hearing.

CONSENT CALENDAR

Adoption of the Consent Calendar may be made by one motion of the Planning Commission, provided that any Commissioner, individual, or organization may request removal of an item from the Consent Calendar for separate consideration. If a request for removal of an item from the Consent Calendar has been received, the Chair may defer action on the particular item and place the same on the regular agenda for consideration in any order s/he deems appropriate.

CORRESPONDENCE

Correspondence and writings received within 72 hours of the scheduled Planning Commission meeting that constitute a public record under the Public Records Act concerning any matter on the agenda is available for inspection during normal business hours at the Permit Center located at 1950 Parkside Drive, Concord. For additional information contact the Planning Division at (925) 671-3152.

HEARINGS

Persons who wish to speak on hearings listed on the agenda will be heard when the hearing is opened, except on hearing items previously heard and closed to public comment. Each public speaker should limit their comments to three (3) minutes or less. The Chair may grant additional time. The project applicant normally shall be the first person to make a presentation when a hearing is opened for public comment. The project applicant's presentation should not exceed ten (10) minutes unless the Chair grants permission for a longer presentation. After the public has commented, the item is closed to further public comment and brought to the Planning Commission level for discussion and action. Further comment from the audience will not be received unless requested by the Commission. No public hearing or hearing shall commence after 11:00 p.m. unless this rule is waived by majority vote of the Commission.

MEETING RECORDS

Planning Commission meetings are available for viewing on the City's website, www.cityofconcord.org and at the Concord Public Library. Copies of DVDs of the Planning Commission Meeting are available for purchase. Contact the Planning Division at (925) 671-3152 for further information.

NOTICE TO THE HEARING IMPAIRED

The Council Chamber is equipped with Easy Listener Sound Amplifier units for use by the hearing impaired. The units operate in conjunction with the Chamber's sound system. You may request the Easy Listener Phonic Ear Personal Sound Amplifier from the staff for personal use during Commission meetings.

ROUTINE AGENDA ITEMS AND CONTINUED ITEMS

All routine and continued items will be considered by the Planning Commission at the beginning of the meeting. There will not be separate discussions of these items unless a request is made prior to the time the Planning Commission considers the motions.

SPEAKER'S CARD

Members of the audience who wish to address the Planning Commission should complete a speaker's card available in the lobby or at the front bench. Submit the completed card to staff before the item is called, preferably before the meeting begins.

TELEVISED MEETINGS

All Planning Commission meetings are broadcast live on Astound Broadband channel 29 and Comcast channel 28. The meeting is replayed on the Thursday following the meeting at 8:00 a.m., 2:00 p.m. and 8:00 p.m. Replays are also broadcast on Fridays and Saturdays. Please check the City website, <http://www.cityofconcord.org/about/citynews/tvlistings.pdf> or check the channels for broadcast times.

NEXT PLANNING COMMISSION MEETINGS:

May 4, 2016: **CANCELLED**
May 18, 2016: 6:30 pm – Council Chamber

REGULAR MEETING OF THE
CITY OF CONCORD PLANNING COMMISSION
COUNCIL CHAMBER, 1950 PARKSIDE DRIVE
CONCORD, CALIFORNIA

Wednesday, April 20, 2016

A regular meeting of the Planning Commission, City of Concord, was called to order by Chair Obringer at 6:30 P.M., April 20, 2016, in the City Council Chamber.

I. ROLL CALL

COMMISSIONERS PRESENT: Chair Carlyn Obringer
Vice Chair Jason Laub
Commissioner LaMar Anderson
Commissioner Ray Barbour

STAFF PRESENT: Laura Simpson, Planning Manager
Susanne Brown, City Attorney
Afshan Hamid, Associate Planner
John Montagh, Economic Development & Housing Manager

II. PLEDGE TO THE FLAG

Commissioner Laub led the pledge.

III. PUBLIC COMMENT PERIOD

No public comment was heard.

IV. ADDITIONS / CONTINUANCES / WITHDRAWALS

None were announced.

V. CONSENT CALENDAR

No public comment was heard.

APPROVAL OF MINUTES

Motion was made by Commissioner Laub, and seconded by Commissioner Anderson to approve the meeting minutes of April 6, 2016. The motion was passed by the following vote:

AYES: Laub, Anderson, Barbour, Obringer
NOES: None
ABSTAIN: None
ABSENT: None

VI. PUBLIC HEARINGS

Jo-Ann Fabrics & Burlington Coat Factory Façade Improvements Appeal (PL15369 – AP) –A resolution denying an appeal by Jo-Ann Fabrics and Burlington Coat Factory of an Administrative Design Review denial for façade improvement application at 1675 Willow Pass Road and approving the March 30th Revised Design for Façade Improvement application at 1675 Willow Pass Road. The General Plan designation is Downtown Mixed Use; Zoning classification is DMX (Downtown Mixed Use); APN 126-281-009. Pursuant to the provisions of the California Environmental Quality Act (CEQA) of 1970, as amended, the project is classified as Categorically Exempt pursuant to Section 15301 Class 1 “Existing Facilities,” and 15302 Class 2 “Replacement or Reconstruction”, therefore no further environmental review is required. **Project Planner: Afshan Hamid @ (925) 671-3281**

Associate Planner, Afshan Hamid, presented the report.

The applicant representative, Tuija Catalano, explained the reasoning for the filing of the appeal and clarified what the applicant is hoping to accomplish with the Planning Commission decision.

Robert Lyman, architect, explained the revisions to the plans.

Public Comment

Richard Terherst, of Harvest Church, expressed his support of the project.

Rob Canepa, project applicant, answered questions from the Planning Commission.

Motion was made by Vice-Chair Laub and seconded by Commissioner Barbour to adopt Resolution 16-06 PC denying the appeal for Jo-Ann Fabrics and Burlington Coat Factory by Montgomery Realty Group, LLC and approving the March 30, 2016 revised design, as amended, with a condition that staff provide an informational report to the Design Review Board. The motion passed by the following vote:

AYES: Laub, Anderson, Barbour, Obringer
 NOES: None
 ABSTAIN: None
 ABSENT: None

Development Agreement Between the City of Concord and Swift Realty Partners, LLC (PL16137 – GP) - Proposal for a Development Agreement between the City of Concord and Swift Realty Partners, LLC to vest current land use designations for the properties located at 1638, 1654, 1672, and 1680 Grant Street. The General Plan designation is Downtown Mixed Use; Zoning Classification is DMX (Downtown Mixed Use); APN’s 126-103-001, -015, -016, and -017. Pursuant to the provisions of the California Environmental Quality Act (CEQA) of 1970, as amended, the project is classified as Categorically Exempt pursuant to Sections 15060(c)(2), 15060(c)(3), 15061(b)(3) and 15378. **Staff Contact: John Montagh @ (925) 671-3082**

Economic Development and Housing Manager, John Montagh, presented the report.

The applicant, Will Lund, spoke about the project and answered questions from the Planning Commission.

Public Comment

No public comment was heard.

Motion was made by Vice-Chair Laub and seconded by Commissioner Anderson to adopt Planning Commission Resolution 16-07 PC recommending City Council Approval and Adoption of the development agreement between the City of Concord and Swift Realty Partners, LLC regarding the development of property located in downtown Concord described as assessor parcel numbers 126-103-001, -015, -016, and -017. The motion passed by the following vote:

AYES: Laub, Anderson, Obringer
 NOES: Barbour
 ABSTAIN: None
 ABSENT: None

VII. COMMISSION CONSIDERATIONS

There were none.

VIII. STAFF REPORTS / ANNOUNCEMENTS

Planning Manager Laura Simpson announced Susanne Brown has been promoted to City Attorney for the City of Concord and will no longer be attending Planning Commission meetings. City Attorney Susanne Brown announced Margaret Kotzebue will be the advisor to the Planning Commission in the interim. Chair Obringer thanked Ms. Brown for her service she has provided to the Planning Commission. Commissioner Anderson also expressed his thanks.

IX. COMMISSION REPORTS/ANNOUNCEMENTS

Chair Obringer announced there will be a Bicycle and Pedestrian meeting on Monday, April 25th at 5:30 p.m. in the Permit Center Conference Room.

X. FUTURE PUBLIC HEARING ITEMS

Planning Manager Laura Simpson announced the next regularly scheduled Planning Commission meeting on May 4th will be cancelled but there will be a special Planning Commission meeting on May 2nd at 6:30 p.m. and will include an appeal for 2799 Clayton Road.

XI. ADJOURNMENT

Chair Obringer announced the adjournment would be made in honor of Design Review Board Member Peter Harmon who passed away on Sunday. Vice Chair Laub moved to adjourn at 7:59 P.M. Commissioner Barbour seconded the motion. Motion to adjourn was passed by unanimous vote of the Commissioners present.

APPROVED:

Laura Simpson
Planning Commission Secretary
Planning Manager

Transcribed by Grant Spilman,
Administrative Coordinator

DRAFT



REPORT TO PLANNING COMMISSION

DATE: May 2, 2016

SUBJECT: CONSIDERATION OF THE NOOTBAAR CHARITABLE REMAINDER UNITRUST (“NOOTBAAR CRUT”) APPEAL OF A ZONING INTERPRETATION BY THE COMMUNITY AND ECONOMIC DEVELOPMENT DIRECTOR OF CONCORD DEVELOPMENT CODE SECTION 18.530.040 REGARDING NON-CONFORMING USES, WITH RESPECT TO A CONVENIENCE STORE WITH ALCOHOL SALES. (PL16125-AC)

Recommendation: Adopt Resolution 16-08 PC (Exhibit A) denying the appeal by Nootbaar Charitable Remainder Unitrust.

I. Introduction

The Planning Commission of the City of Concord, California has received an appeal of the Community and Economic Development Director’s interpretation of Development Code Section 18.530.040 (Exhibit B). The business/property owner, Nootbaar Charitable Remainder Unitrust (“Nootbaar CRUT”) owns 2799 Clayton Road. The property was purchased by Bob and Shirley Nootbaar in 1973, at which time the property was being used as a convenience store and gas station. The ownership of the property transferred to Nootbaar CRUT in November 2007. The uses were established under the prior Zoning Ordinance before the 2012 Development Code (“Development Code”) became effective.

The appeal by Nootbaar CRUT (Appellant) was submitted following a series of correspondence between the Appellant and Planning staff beginning in January 2016.

A. Request

Appeal of the Community and Economic Development Director’s March 14, 2016 letter of interpretation (Exhibit C) of Development Code Section 18.530.040, which states that the non-conforming status of a use, structure or physical improvement shall terminate if discontinued for more than one year; and that, with respect to 2799 Clayton Road, the property lost its previous legal non-conforming use status with regard to beer and wine sales in the convenience store located on the property. The Appellant believes this decision was erroneous and that beer and wine sales should be allowed as a legal non-conforming use through November 25, 2016.

B. Location

Appellant owns 2799 Clayton Road, APN 113-288-005. The parcel is within the Downtown Mixed Use (DMX) zoning district.

**Appeal of Community and Economic Development Director's Interpretation Regarding
Legal Non-Conforming Use
PL16125 - AC
May 2, 2016**

C. Appellant Jason Granskog Bowles & Verna LLP 2121 N. California Blvd, Suite 875 Walnut Creek, CA 94596	Property Owner(s) Nootbaar Charitable Remainder Unitrust PO Box 886, Alamo CA 94507
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II. Background

Appellant represents owner of 2799 Clayton Road, Concord, the site of an existing, legal non-conforming gas station and a vacant convenience store. The Planning Commission approved Use Permit 66-64 for a convenience store at the site in May 1986. The market was expanded in July 1988 under Use Permit 27-88 (Exhibit D).

Bob and Shirley Nootbaar purchased the 2799 Clayton Road property in 1973 at which time the property was in use as a convenience store and gas station. The ownership of the property was later transferred to Shirley Nootbaar as Trustee of the Nootbaar CRUT in November 2007.

The Nootbaars had one tenant occupying the property as a gas station and convenience store with beer and wine sales from 1988 until March 2012. In early 2012, the tenant stopped paying rent and filed for bankruptcy. The Nootbaar CRUT obtained control of the property in the fall of 2012.

The City of Concord adopted a new Development Code on July 24, 2012, with an effective date of August 23, 2012. Via the new Development Code, the City made certain policy decisions, including disallowing gas stations and alcohol sales in the zoning district where the subject property was located. In order to balance that policy goal with the recognition that certain pre-existing uses were rendered legal nonconforming, Development Code Section 18.530.030 (Nonconforming uses and nonconforming structures) allowed such uses to continue under certain circumstances, but also set out the conditions under which legal nonconforming status could be lost. Development Code Section 18.530.040 (Loss of nonconforming status) at subsection A.1 provides that a nonconforming use terminates if it is discontinued for a continuous period of 365 calendar days or more; subsection A.2 allows the planning division to base its "determination of discontinuance on evidence including the removal of equipment, furniture, machinery, structures, or other components of the nonconformity, disconnected or discontinued utilities, or no business receipts or records to document continued operation."

In August 2012, the owner was notified by a letter from then Planning Manager Carol Johnson that the zoning of the property would change effective August 23, 2012, and that the zoning would continue to prohibit motor vehicles service or repair which includes gas stations. However, Ms. Johnson opined that the existing gas station use would be allowed to continue as a legal non-conforming use since it had operated continuously, based her assessment of the following facts in accordance with Development Code Section 18.530.040.A.2. This determination was limited only the gas station operation.

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At the time, the Appellant submitted information that, beginning in 2001, the property was being remediated sporadically. Then Planning Manager Carol Johnson, in an e-mail dated February 25, 2013, indicated that the remediation efforts underway were evidence that the legal nonconforming use of a gas station use had not been discontinued. In November 2015, the gas station finally received a No Further Action letter from the state indicating that the clean had been completed. In a letter dated January 5, 2016, Planning Manager Laura Simpson indicated that the legal non-conforming use status of the gas station would not lapse until November 25, 2016. The legal non-conforming use request and analysis focused on the gas station aspect only; Appellant neither requested a determination on, or submitted evidence related to, alcohol sales at that time. The maintenance of the beer and wine liquor license could have been done independently of any remediation issues.

Regarding alcohol sales at the convenience store, the prior tenant held a California Department of Alcohol Beverage Control (ABC) Type 20 license, allowing retail sales of beer and wine for off-site consumption. However, since the tenant vacated the property, the license was not renewed and it expired on June 30, 2013. It was then automatically revoked by ABC as of October 17, 2013. The Nootbaar CRUT never sought an ABC license. In a brief e-mail on January 12, 2016, the Nootbaar CRUT asked Ms. Simpson if the City would object to a purchaser renewing the beer and wine license. Ms. Simpson responded in error that the City was fine with a beer and wine license, as she was unaware that the ABC license had expired.

Upon further research Ms. Simpson learned that the ABC license had expired in 2013 and was automatically revoked by ABC on October 17, 2013, and she advised the Community and Economic Development Director, Victoria Walker, of that fact. Principal Planner Andrew Mogensen informed a potential purchaser of the site in a letter dated March 3, 2016, that the legal non-conforming use of the convenience store with alcohol sales had been lost, as that was separate from the gas station use. Mr. Nootbaar then e-mailed Ms. Walker on March 8th requesting a reconsideration of that determination. In a letter dated March 14, 2016, Ms. Walker informed Nootbaar CRUT, that due to the revocation of the ABC beer and wine license in 2013, the legal non-conforming status of the use with respect to alcohol sales had been lost.

The subject of this appeal is not the gas station, but the convenience store with alcohol sales. Convenience stores without alcohol sales may be permitted in the Downtown Mixed Use (DMX) zoning district through an Administrative Permit. The existing convenience store was approved in May 1986 under UP 66-64 and expanded in July 1988 under UP 27-88. A convenience store without alcohol sales may be re-opened and permitted through an Administrative Permit process.

As of the date of this report, the California Department of Alcoholic Beverage Control (ABC) does not identify a license for 2799 Clayton Road in Concord. The last record of ABC indicates that the Off-Sale Beer and Wine License 434973 for the address of 2799 Clayton Road was automatically revoked as of October 17, 2013.

III. General Information

A. General Plan

The General Plan designation in 1988, at the time the Planning Commission approved the Use Permits, was for Core Commercial Uses in the Downtown Business District. The current General Plan designation is DMX (Downtown Mixed Use).

B. Zoning

At the time the Use Permits were approved, the site was zoned Downtown Business District. The site is currently zoned DMX (Downtown Mixed Use) and convenience stores with alcohol sales are not permitted.

C. CEQA¹ Status

The Planning Commission's consideration of and action on the Appeal of 2799 Clayton Road, Concord's convenience store with alcohol sales does not constitute a "project" within the meaning of Public Resources Code Section 21065, 14 Cal Code Regs. Sections 15060(c)(2), 15060(c)(3), or 15378 because it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Even if such activities did constitute a project under the CEQA, staff believes the activities they fall within the "common sense" CEQA exemption set forth in 14 Cal Code Regs. Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." Moreover, even if the activities did not qualify for the common sense exemption, they are exempt from CEQA pursuant to CEQA Guidelines Sections 15301 (Existing Facilities), 15302 (Replacement or Reconstruction), and 15303 (New Construction or Conversion of Small Structures) because, among other things, they involve minor alterations to existing facilities, replacement or reconstruction of existing facilities, and construction and location of limited numbers of new small facilities or structures, all as further detailed in this staff report and attachments hereto.

IV. Description of Business

Appellant owns 2799 Clayton Road, Concord, the site of an existing, legal non-conforming gas station and a vacant convenience store. The Planning Commission approved Use Permit 66-64 for a convenience store in May 1986. The market was expanded in July 1988 under UP 27-88.

Analysis

Due to a change of zoning on August 23, 2012, automotive services (including gas stations), car washes, and convenience stores with alcohol sales are no longer permitted in the Downtown Mixed

¹ California Environmental Quality Act of 1970, Public Resources Code § 21000, et seq., as amended and implementing State CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations (collectively, "CEQA.")

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Use (DMX) zoning district. The current standards regarding non-conforming uses are found within Chapter 18.530.040 of the City's Development Code, which states that the nonconforming status of a use, structure or physical improvement shall terminate if discontinued for more than one year. As discussed in this staff report, due to extenuating circumstances surrounding the gas station at 2799 Clayton Road, and documented efforts on Appellant's part to remediate the property and continue the gas station use, the Planning division made a formal determination regarding its current legal non-conforming status of the gas station use in 2016.

The gasoline station at 2799 Clayton Road has been vacant and without tenancy since March of 2012. According to the State Water Resources Control Board, the gas station had been undergoing remediation which made it impossible to operate the property as a gas station or redevelop the site during this period. Based on the State's regulatory closure of the leaking underground storage case as of November 25, 2015, the City informed the property owner that they had one year from that date, until 5:00 pm on November 25, 2016, in which to commence with the continuation of the operation of a gas station and the sale of gasoline at the site in order to continue to maintain the property as a legal non-conforming use.

The subject of the appeal is not the gas station, but the convenience store with alcohol sales. Convenience stores without alcohol sales may be permitted in the Downtown Mixed Use (DMX) zoning district through an Administrative Permit. The existing convenience store was approved in May 1986 under UP 66-64 and expanded in July 1988 under UP 27-88. So the convenience store without alcohol sales may be re-opened and permitted through an Administrative Permit process.

As of the date of this report, the California Department of Alcoholic Beverage Control (ABC) does not identify a license for 2799 Clayton Road in Concord. The last record of ABC indicates that the Off-Sale Beer and Wine License 434973 for the address of 2799 Clayton Road was automatically revoked as of October 17, 2013. It has been over two years and six months since the date of revocation, which is well past the one year timeframe after which a legal non-conforming use will be terminated under Development Code Section 18.530.040.

The brief email sent by Laura Simpson, Planning Manager, dated January 12, 2016 regarding potential alcohol sales was sent without the knowledge of the revocation of the type 20- Off-sale Beer and Wine License Number 434973, that occurred on October 17, 2013 (Exhibit E) After learning the facts, the Community and Economic Development Director, Victoria Walker informed Nootbaar CRUT in a letter dated March 14, 2016, that due to the revocation of the ABC license in October 2013, the legal non-conforming status of the use with respect to alcohol sales had been lost..

A. Authority Regarding Interpretation of the City's Ordinances

The Development Code constitutes Title 18 of the Concord Municipal Code. Cities have broad latitude to interpret their own municipal codes² and courts will follow an agency's interpretation of its own laws and regulations unless clearly erroneous or unauthorized. Concord's interpretation of its Development Code is subject to this deference. As discussed

² See *City of Walnut Creek v. County of Contra Costa* (1980) 101 Cal.App.3d 1012, 1021; *MHC Operating Ltd. Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 219.

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above, Development Code Section 18.530.040 (Loss of nonconforming status) addresses actors for analyzing continuance or discontinuance of a legal nonconforming use. As detailed in this staff report, the City has satisfied applicable legal requirements with respect to both the Interpretation, and in connection with the analysis of Appellant's request.

Per Development Code Section 18.10.060, the Planning Division is enabled to interpret any provision of the development code or its application to a specific site. Planning Division decisions are appealable to the Zoning Administrator, but may be referred to the Planning Commission, as is the case here (Development Code Sec. 18.510).

Because the Planning Commission's review of this matter on appeal is "de novo" under Development Code Section 18.510.050(c), the Planning Commission may consider new materials and testimony in addition to the original application, plans, and related project materials that were the subject of the original decision. Staff has attached the pertinent correspondence to this staff report. However, only the issue of whether or not to allow a convenience store with alcohol sales is before the Commission in this hearing.

B. Interpretation Letter

Appellant asserts that it was impossible to operate the property as a gas station while the extensive clean-up efforts were underway, and contends that the City recognized this when it determined that the legal non-conforming status would not lapse until November 25, 2016. Appellant contends that the legal non-conforming use of the 2799 Clayton Road property's convenience store for sale of beer and wine must also be deemed not to lapse until November 25, 2016. Appellant indicates that when the prior tenant let the ABC license lapse, the CRUT had no reason to seek a new license as the store was still vacant as the remediation was underway.

Appellant is seeking for the City's interpretation that the legal non-conforming use status also be conveyed to the convenience store with alcohol sales through November 25, 2016. It is important to note that a convenience store without alcohol sales is allowed at the subject site.

The Zoning Interpretation letter by Community and Economic Development Director dated March 14, 2016 to Mr. Nootbaar clearly indicates that the use of the convenience store with alcohol sales terminated one year after the ABC license was auto-revoked on October 17, 2013, as the legal non-conforming status ended on October 17, 2014. The use then became unpermitted pursuant to the Current Development Code DMX zoning.

C. Public Contact

Notification was mailed to all owners and occupants of property within three-hundred (300) feet of the subject parcel, and has been published in the Contra Costa Times, as required by the Concord Municipal Code. This item has also been posted at the Civic Center and at the subject site at least 10 days prior to the public hearing.

V. Summary and Recommendations

Staff recommends the Commission deny the Appeal by adopting the attached Resolution.

VI. Motion

Denial of Appeal and Amendment of Use Permits With Respect to With Respect to a Convenience Store With Alcohol Sales

I (Comm. _____) hereby move that the Planning Commission adopt Resolution 16-08 PC denying the Nootbaar CRUT Appeal for 2799 Clayton Road, Concord to allow a convenience store with alcohol sales. (Seconded by Comm. _____.)

Prepared by:



Laura Simpson
Planning Manager

laura.simpson@cityofconcord.org

Exhibits:

- A: Planning Commission Resolution 16-08 PC
- B: Correspondence from the Appellant dated March 21, 2016 (received 3/23/16)
- C: Correspondence from the City dated March 14, 2016
- D: Use Permits
- E: Revocation of ABC License

1 calendar days or more; and subsection A.2 allows the planning division to base its “determination of
2 discontinuance on evidence including the removal of equipment, furniture, machinery, structures, or other
3 components of the nonconformity, disconnected or discontinued utilities, or no business receipts or records
4 to document continued operation;” and

5 **WHEREAS**, under Development Code Section 18.530.040, which states that the non-
6 conforming status of a use, structure or physical improvement shall terminate if discontinued for more
7 than one year, the legal, non-conforming use status of the convenience store with alcohol sales at 2799
8 Clayton Road was lost as of October 17, 2014, one year after the ABC license was revoked; and

9 **WHEREAS**, on March 8, 2016, the Community and Economic Development Director
10 received an e-mail from Mr. Tom Nootbaar, who requesting that the City of Concord reconsider the
11 determination that the property owned by the Nootbaar CRUT located at 2799 Clayton Road is no
12 longer entitled to operate a convenience store with alcohol sales; and

13 **WHEREAS**, the Community and Economic Development Director sent to Mr. Tom Nootbaar
14 on March 14, 2016 a letter of interpretation of Development Code Section 18.530.040, which states
15 that the non-conforming status of a use, structure or physical improvement shall terminate if
16 discontinued for more than one year; and that, with respect to 2799 Clayton Road, the property lost its
17 previous legal non-conforming use status with regard to beer and wine sales in the convenience store
18 located on the property; and

19 **WHEREAS**, on March 23, 2016, the City received an appeal from Jason Granskog of Bowles
20 &Verna, LLP, representing Nootbaar Charitable Remainder Unitrust (Nootbaar CRUT), owner of
21 property located at 2799 Clayton Road, Concord, of the Community and Economic Development
22 Director’s March 14, 2016 letter of interpretation of Development Code Section 18.530.040, which
23 states that the non-conforming status of a use, structure or physical improvement shall terminate if
24 discontinued for more than one year; and that, with respect to 2799 Clayton Road, the property lost its
25 previous legal non-conforming use status with regard to beer and wine sales in the convenience store
26 located on the property; and

27 **WHEREAS**, the Planning Commission, after giving all public notices required by State law
28

1 and the Concord Municipal Code, held a duly noticed public hearing at a special meeting on May 2nd,
2 2016 to consider the 2799 Clayton Road Appeal (PL16125-AC); and

3 **WHEREAS**, at such public hearing, the Planning Commission considered all oral and written
4 testimony, materials, and information received, including the oral reports from City staff and
5 Appellant, the written report from City staff dated May 2nd, 2016 and all attachments thereto
6 (collectively, "Staff Report"), the Appeal, exhibits of correspondence presented, and all other
7 pertinent plans, documents, testimony, other materials, and information contained in the record of
8 proceedings relating to the Use Permits, the Interpretation, and the Appeal, which are maintained at
9 the offices of the City of Concord Planning Division (collectively, "Record"); and

10 **WHEREAS**, on May 2nd, 2016, the Planning Commission, after consideration of all pertinent
11 plans, documents and testimony, declared their intent to deny the Appeal (PL16125-AC).

12 **NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:** that the Planning Commission
13 does hereby make the following findings:

14 General

- 15 1. The recitals above are hereby incorporated in to the findings by reference.
- 16 2. The Planning Commission has reviewed, considered, and evaluated the Record.
- 17 3. The Planning Commission's decision is based on its interpretation of the Development Code
18 Section 18.530.040 (Loss of nonconforming status) at subsection A.1 provides that a nonconforming use
19 terminates if it is discontinued for a continuous period of 365 calendar days or more; subsection A.2 allows
20 the planning division to base its "determination of discontinuance on evidence including the removal of
21 equipment, furniture, machinery, structures, or other components of the nonconformity, disconnected or
22 discontinued utilities, or no business receipts or records to document continued operation."

23 CEQA

- 24 4. Denial of a project is not subject to review in under the California Environmental Quality Act of
25 1970, Public Resources Code § 21000, et seq., and implementing State CEQA Guidelines, Title
26 14, Chapter 3 of the California Code of Regulations, all as amended from time to time ("CEQA").

1 Appeal

2 5. The Planning Commission does hereby deny the appeal from Jason Granskog of Bowles
3 &Verna, LLP, representing Nootbaar Charitable Remainder Unitrust (Nootbaar CRUT), owner of
4 property located at 2799 Clayton Road, Concord, of the Community and Economic Development
5 Director’s March 14, 2016 letter of interpretation of Development Code Section 18.530.040, which
6 states that the non-conforming status of a use, structure or physical improvement shall terminate if
7 discontinued for more than one year; and that, with respect to 2799 Clayton Road, the property lost its
8 previous legal non-conforming use status with regard to beer and wine sales in the convenience store
9 located on the property:

- 10 i. Convenience Store with Alcohol Sales located at 2799 Clayton Road, Concord , a use
11 which is not allowed under the Downtown Mixed Use (DMX) zoning designation that applies
12 to the subject property at 2799 Clayton Road.
- 13 ii. 2799 Clayton Road Use Permits 66-64 and 27-88 were approved prior to the
14 Downtown Mixed Use (DMX) zoning designation in 2012 and the use of a convenience store
15 with alcohol sales lost its legal non-conforming status one year after the ABC license was
16 automatically revoked on October 17, 2013.

17 Effective Date

18 6. In accordance with City of Concord Municipal Code Section 18.500.080, approvals, or other
19 decisions of the Planning Commission shall become effective on the 11th calendar day following the
20 date the decision is rendered, if no appeal is filed.

21 **PASSED AND ADOPTED** this 2nd day of May, 2016, by the following vote:

22 **AYES:**

23 **NOES:**

24 **ABSTAIN:**

25 **ABSENT:**

26 _____
27 Laura Simpson, AICP
28 Secretary to the Planning Commission

March 21, 2016

HAND-DELIVERED

received 3/23

Ms. Victoria Walker
Director of Community and Economic Development
City of Concord
1950 Parkside Drive
Concord, CA 94519-2578

City Clerk
City of Concord
1950 Parkside Drive
Concord, CA 94519-2578

**Re: Legal Nonconforming Use Rights of the Nootbaar Charitable Remainder Unitrust
2799 Clayton Road, Concord, California
Appeal of "Decision" regarding alcohol sales in letter dated March 14, 2016**

Dear Ms. Walker and the City of Concord:

This letter is written on behalf of our client, the Nootbaar Charitable Remainder Unitrust, the owner of the property located at 2799 Clayton Road, Concord, California. As this letter may be read by individuals without a background regarding this property, please allow me to summarize the recent history.

The 2799 Clayton Road property has a long history of operation as a gas station, dating back to the 1920's. Bob and Shirley Nootbaar (initially along with some partners) purchased the property in 1973, at which time the property was being used as a convenience store and gas station. The ownership of the property was ultimately transferred to the current owner, Shirley Nootbaar as Trustee of the Nootbaar Charitable Remainder Unitrust ("Nootbaar CRUT") in November 2007.

The Nootbaars had one tenant occupying and operating the property as a gas station and convenience store, which included beer and wine sales, from 1988 until approximately March 2012. In early 2012, the tenant stopped paying rent and filed for bankruptcy. The Nootbaar CRUT therefore had to engage in court processes, both in the local and bankruptcy courts, to regain control of the property. The Nootbaar CRUT finally obtained control of the property in the fall of 2012.

On August 2, 2012, Carol Johnson, the City's then Planning Manager, wrote to Tom Nootbaar (Shirley Nootbaar's son and the primary contact person for this property), regarding the property (copy attached). Ms. Johnson's letter notified the Nootbaar CRUT that the zoning of the property would change effective August 23, 2012. According to this letter, the updated zoning would continue to prohibit "motor vehicle service or repair (which includes gas

City of Concord
March 22, 2016
Page 2

stations).” However, since the property had been used as a gas station and convenience store since before the first zoning change in 1977, the existing use was expressly “allowed to continue as a non-conforming use since it had operated continuously.” Ms. Johnson’s letter did not discuss any aspect of the convenience store portion of the property.

Starting in approximately 2001, environmental consultants had been engaged to undertake a cleanup of a prior fuel leak, under the supervision of the California Water Resources Control Board. However, as the prior tenant was continuing to operate the property as a gas station and convenience store, the cleanup efforts were relatively minor and proceeding very slowly. Because of the tenant’s bankruptcy, site access was impeded and the cleanup was essentially put on hold from March through the fall of 2012.

Mindful of the August 2012 letter from the City referencing “continuous” operation of the property, in February 2013, Tom Nootbaar had an email exchange with Ms. Johnson. At the time, the Nootbaar CRUT had reached an agreement to sell the property, but that agreement was contingent upon certain results of further environmental testing, and a determination that the failure to use the property for a gas station for a period of time would not result in the lapse of the legal non-conforming use status. In an email dated February 25, 2013 (copy attached), Ms. Johnson assured the Nootbaar CRUT that the pendency of the clean-up efforts was sufficient evidence that the legal nonconforming use of the property had not been discontinued within the meaning of the Concord Development Code:

The fact that the CRWQCB is requiring specific testing take place before the use may be reactivated serves as sufficient evidence that the use has NOT been discontinued. It is often the case that new regulations, particularly those related to protecting the environment, require additional permits or testing. The fact that you are actively seeking these permits provides evidence that the use had not been abandoned.

As it turns out, the February 2013 tentative sale was not completed. After the failure of that sale, the cleanup effort was reevaluated. It was determined that the cleanup could likely be completed in a relatively short period of time, but only if the environmental consultants were given free reign over the property – meaning the gas station and convenience store would not be able to operate during the remainder of the cleanup efforts.

Thereafter, the environmental consultants fenced off the entire property to prevent access. The stepped up cleanup efforts required that the site be protected, as it involved water, power and pressurized air lines strewn about the property, and careful monitoring of several wells drilled on the property. A diagram showing the location of these installations is attached to this letter. Also attached are various photographs taken from Google street view, which are dated April

City of Concord
March 22, 2016
Page 3

2015, showing the various lines laying on the ground and even entering the front of the convenience store building. It would have clearly been unsafe to operate either the convenience store or the gas station with these lines, pipes and wells in place on the property.

Fortunately, the increased cleanup efforts were largely successful. In November 2015, the property received a "No Further Action" (NFA) letter from the state, indicating that the cleanup had been completed to the best possible result given economic constraints. Shortly after receiving the NFA letter, Tom Nootbaar again reached out to the City, only to be told that the gas station use would no longer be permitted.

In response, Mr. Nootbaar drafted his letter of December 11, 2015 (copy attached). After receiving Mr. Nootbaar's letter and the attachments thereto, the City correctly determined that the legal non-conforming use had not lapsed, and would not lapse until November 25, 2016, one year after the end of the cleanup efforts. This finding was made in a letter dated January 5, 2016, from Laura Simpson, the Planning Manager.

Regarding alcohol sales in particular, the prior tenant held a valid California Department of Alcoholic Beverage Control Type 20 license, allowing retail sales of beer and wine for off-site consumption. However, since the tenant filed bankruptcy and vacated the property, the tenant understandably did not seek to renew the license, and it expired in 2013. Further, the Nootbaar CRUT was never in a position to operate either the gas station or convenience store on the property due to the extensive cleanup efforts, so it never sought an ABC license.

Almost as an afterthought, after receiving the City's January 5 letter, Mr. Nootbaar inquired via email whether the City would object to the Nootbaar CRUT or a subsequent purchaser seeking to renew the beer and wine license. Ms. Simpson responded on January 12:

No the City is fine with a beer and wine license. (copy attached)

Thus, the Nootbaar CRUT had no need to appeal from any aspect of the City's January 5, 2016 letter.

Now however, the City is attempting to take a different view. In a letter dated March 14, 2016, Ms. Walker wrote to Mr. Nootbaar, pointing out that the new DMX zoning permits convenience store operations but only without alcohol sales. Ms. Walker's letter impliedly confirms that the convenience store on this property would have been allowed to continue beer and wine sales as a legal non-conforming use, but asserted that the failure to renew the license through the ABC in 2013 has resulted in the loss of that legal non-conforming use status.

City of Concord
March 22, 2016
Page 4

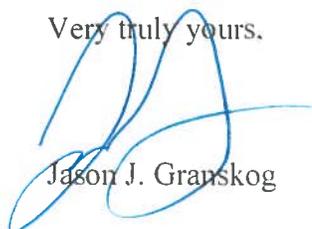
The Nootbaar CRUT believes Ms. Walker's letter was written without a true understanding of the facts applicable to this property. As noted above, it was impossible to operate the property as a gas station while the expansive cleanup efforts were underway, a fact the City recognized when it correctly determined that the legal nonconforming use status would not lapse until November 25, 2016. **As can be clearly seen from the photos attached, it was also impossible to operate the convenience store during this time.** Thus, by the same logic the City has already acknowledged and approved, the legal nonconforming use of the 2799 Clayton Road property's convenience store for the sale of beer and wine must also be deemed not to lapse until November 25, 2016.

Additionally, it must be recalled that the tenant and the Nootbaar CRUT were involved in litigation in the state court and involved in the tenant's bankruptcy proceedings in federal court. The tenant had no incentive to renew the license, and the Nootbaar CRUT knew that the property could not be operated, so it had no reason to seek a new license. In any event, licenses issued by the ABC must be used within 30 days of issuance¹, so no one would be in a position to apply for a new license until the store is nearly ready to be opened for business.

The Nootbaar CRUT recognizes that it or a subsequent owner or operator of the property must still seek and obtain a Type 20 license from the ABC before being permitted to sell beer and wine at the property. It is certainly possible that such license will not be obtained at all, or not obtained in time to avoid the expiration of the legal nonconforming use status. All the Nootbaar CRUT is seeking here is for the City to not interfere with that process, and acknowledge that if a license is obtained in a timely fashion the legal nonconforming use status permitting beer and wine sales would still be applicable to this property.

Should there be any questions, please do not hesitate to contact me.

Very truly yours,



Jason J. Granskog

JJG/wrd
Enclosures

cc: client

¹ Business & Professions Code § 24040.



RECEIVED

FOR STAFF USE ONLY

PUBLIC NOTICE FEE \$ 349
(According to Fees and Charges Resolution)

DATE PAID 3/24/16

FEE REC'D BY Grant Simpson

PLANNING

DATE 3/24/16

TO: City Council
City of Concord
1950 Parkside Drive, MS/03
Concord, CA 94519-2578

NOTICE OF APPEAL
[Concord Municipal Code 2901(b)]

MAR 24 2016

I hereby appeal the decision / requirement of the Community and Economic Development Department

(ADMINISTRATOR OR COMMISSION)

in approving / denying the application of The Nootbaar Charitable Remainder Unitrust

(NAME OF APPELLANT)

for Beer and wine sales at 2799 Clayton Road on March 14, ~~19~~ 2016
(TITLE OF ITEM BEING APPEALED)

Please indicate the specific action(s) or requirement(s) being appealed: Ms. Walker, the Director of Community and Economic Development, wrote a letter to the Nootbaar Charitable Remainder Unitrust, dated March 14, 2016. In this letter, Ms. Walker asserted that the property located at 2799 Clayton Road has lost its previous legal non-conforming use status with regard to beer and wine sales in the convenience store located on the property. The Nootbaar Charitable Remainder Unitrust believes this decision was erroneous, as explained in detail in the accompanying letter and attachments.

Nootbaar Charitable Remainder Unitrust

(PRINT) NAME OF APPELLANT

SIGNATURE OF APPELLANT / REPRESENTATIVE

c/o Tom Nootbaar

APPELLANT'S ADDRESS

Post Office Box 886, Alamo, CA 94507

HOME PHONE

925-708-1182

BUSINESS PHONE

ADDRESS FOR NOTICES

Bowles & Verna, LLP, 2121 N. California Blvd., Suite 875, Walnut Creek, CA 94596

MY REPRESENTATIVE IS

Jason J. Granskog, Bowles & Verna, LLP

BUSINESS PHONE

925-935-3300

FOR STAFF USE ONLY

ADDRESS OF PROPERTY INVOLVED

2799 Clayton RD

ASSESSOR'S PARCEL NUMBER(S)

113-288-005

MUNICIPAL CODE SECTION

FILE NUMBER

PL16/25-AC

FILE TITLE

2799 Clayton RD APPEAL OF STAFF INTERPRETATION

NAME OF RESPONSIBLE PLANNER

REVIEWED BY (PLANNING STAFF)

RECEIVED BY

PROJECT PLANNER

LAURA SIMPSON

CITY CLERK USE ONLY

Received written appeal on _____

Scheduled for Council agenda of _____ to set for Public Hearing on _____

Copies distributed to appropriate parties

DEPUTY CITY CLERK

CITY OF CONCORD
COMMUNITY & ECONOMIC DEVELOPMENT
1950 Parkside Drive, MS 1B
Concord, California 94519
Telephone: (925) 671-3355
FAX: (925) 671-3381



CITY COUNCIL EXHIBIT C
Lana M. Hollenister, Mayor
Ronald E. Leone, Vice Mayor
Ed E. Busan
Timothy S. Grayson
Danel C. Healy

Tim McCallhan, City Treasurer
Valerie J. Brone, City Manager

March 14, 2016

Mr. Tom Nootbar
Nootbar Charitable Remainder UniTrust
PO Box 886
Alamo CA 94507-0886

RE: Inquiry Regarding Continuation of Alcohol Sales at 2799 Clayton Road, Concord

Dear Mr. Nootbar:

On March 8, 2016, I received an email from you requesting that the City of Concord reconsider the determination that the property owned by the Nootbar Charitable Remainder UniTrust located at 2799 Clayton Road is no longer entitled to operate a convenience store with alcohol sales. The site was most recently used as a gas station. But, as established in prior correspondence to you dated January 5, 2016, the gasoline station and the convenience store land use has been discontinued since the former tenant abandoned the property on March 14, 2013.

Due to a change of zoning on August 23, 2012, automotive services (including gas stations), car washes, and convenience stores with alcohol sales are no longer permitted in the Downtown Mixed Use (DMX) zoning district. The current standards regarding non-conforming uses are found within Chapter 18.530.040 of the City's Development Code, which states that the nonconforming status of a use, structure or physical improvement shall terminate if discontinued for more than one year.

In that same January 5th letter, the Planning Manager determined that the fact that the gas station equipment remained in place and the fact that on-going remediation was continuing allowed a determination that the site has "continued to be utilized as a gas station" between March 14, 2013 and December 11, 2015. The letter continues on to determine that "you have.....until 5:00 p.m. on November 25, 2016, in which to commence with the continuation of the operation of a gas station and sale of gasoline at the site in order to continue to maintain the property as a legal nonconforming use." Please note that this determination does not state nor imply that the site also continued to be used as a convenience store selling alcohol during that time.

The January 5th letter also informed you that you had the right to appeal the Planning Manager's zoning interpretation decision regarding the date by which you could reestablish the legally non-conforming gas station land use. The Planning Manager indicated that such an appeal would be heard by the Planning Commission but must be received within 10 days of the date of the determination letter. You, as the representative of the property owner, did not choose to appeal that decision.

On March 1, 2016, a potential buyer for this property representing Adria Giacomelli from Lockhouse Retail Group Inc. asked City staff about the possible redevelopment of the convenience store portion of the gas station. As convenience stores without alcohol sales may be permitted in the Downtown Mixed Use (DMX) zoning district, and the existing facility has a prior Use Permit, staff informed Ms. Giacomelli that a future owner may be able to demolish and rebuild the existing convenience store building with approval of a Design Review and Amended Use Permit approval if the entitlements are exercised prior to the established deadline of November 25, 2016.

As for the continued sale of alcoholic beverages at the convenience store, the California Department of Alcoholic Beverage Control has informed the Planning Division that the loss of privilege for this property to sell alcoholic beverages ended on September 17, 2013 and that the license was auto-revoked by their agency on October 17, 2013 for failure to renew. The period that has elapsed since that date exceeds the one-year time frame for legal non-conforming uses; as such, there are no "grandfathered rights" and alcohol sales are not permitted. The brief email sent to you, on January 12, 2016 regarding potential alcohol sales by Laura Simpson, Planning Manager, but she was unaware of this information and the email was sent in error. All this information regarding alcohol sales was provided in a letter of March 3, 2016 from Principal Planner Andrew Mogensen to Ms. Giacomelli.

To the extent that you disagree with a determination regarding reestablishing a convenience store with alcohol sales that is made in this letter, you have the right, as the property owner representative, to appeal the decision to the Planning Commission. Appeals and the required filing fees must be filed with the City Clerk within ten (10) calendar days of the date of this letter. The appeals procedure is set forth in Development Code Section 18.510, a copy of which is enclosed for your convenience.

If you have any questions or need further assistance, please contact the Planning Department at (925) 671-3152.

Sincerely,



Victoria Walker
Director of Community and Economic Development

*Exhibits: A – January 5, 2016 Planning Division letter to Tom Nootbar
B – March 3, 2016 letter from Principal Planner A. Mogensen to Adria Giacomelli,
Lockhouse Retail Group Inc.*

Cc: Laura Simpson, Planning Manager
Susanne Brown, Senior Assistant City Attorney
Andrew Mogensen, Principal Planner

CITY OF CONCORD
PERMIT CENTER
1950 Parkside Drive
Concord, California 94519 2578

Telephone: (925) 671 3454
Fax (925) 671 3381



January 5, 2016

Tom Nootbaar
P.O Box 886
Alamo, Ca 94507-0886

**RE: Gasoline station
2799 Clayton Road
Concord, CA 94519**

Dear Mr. Nootbaar:

The City of Concord has received and reviewed your letter dated December 11, 2015 regarding the status of your gas station property located at 2799 Clayton Road. We appreciate you taking the time to gather the information necessary for City staff to make a determination on the status of your gas station, as well as your patience as we research this issue.

According to observations made by City staff and based on your own statements, the gasoline station at 2799 Clayton Road has been vacant and without tenancy since March 2012. Based on this information, a Zoning Status letter dated August 3, 2012 was sent to you by our former Planning Manager, Carol Johnson. This letter (attached) served as our notification to you regarding the zoning and land use changes for the subject property, which were modified from Downtown Business (DB) to Downtown Mixed Use (DMX) as of August 23, 2012.

Despite this change in zoning designation, automotive services (including gas stations) continued to be prohibited on the subject property. According to the letter, the original use permit which granted the gas station approval (UP66-64) and subsequent use permits (UP27-88), all noted that the gas station continued to operate as a legal non-conforming use, due to continuous operation since the time of initial approval. The letter from Ms. Johnson notes that the standards for non-conforming uses in the previous Zoning Ordinance were unclear and difficult to interpret with the exception that the right to continue a nonconforming use would be lost if the use was ever discontinued for more than six months.

The current standards regarding non-conforming uses can be found within Chapter 18.530 040 *Loss of nonconforming status* of the City's Development Code, which states that the

nonconforming status of a use, structure or physical improvements shall terminate under the following conditions:

A. *Discontinuance.*

1. *If the nonconforming use of land, a nonconforming use of a conforming structure, a conforming use of a nonconforming structure or use of nonconforming physical improvements is discontinued for a continuous period of 365 calendar days or more, all rights to legal nonconforming status shall terminate.*
2. *The planning division shall base a determination of discontinuance on evidence including the removal of equipment, furniture, machinery, structures, or other components of the nonconformity, disconnected or discontinued utilities, or no business receipts or records to document continued operation.*
3. *Without further action by the city, any further use of the land, structure or physical improvements shall comply with all of the regulations of the applicable zoning district and all other applicable provisions of this development code and city-adopted design guidelines.*

The August 3, 2012 letter from Carol Johnson mentions a previous letter (date unknown) received by the City of Concord from Mr. Nootbar, stating the discontinued use of the gas station was reportedly done without authorization or ability to intervene from the property owner due to a subsequent tenant bankruptcy. The letter was considered sufficient documentation to establish intent to continue the legally nonconforming use as a gas station at 2799 Clayton Road. Accordingly the City Attorney's Office advised the Planning division that since the nonconforming provisions of the current Zoning Ordinance were superseded on July 24, 2012 when the City Council adopted the new Development Code, staff would not consider the use abandoned until March 14, 2013, such being the date the former tenant abandoned the property.

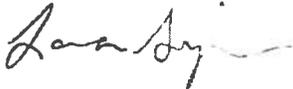
According to the information provided to the City of Concord in your December 11, 2015 letter, the station has been undergoing ramped up remediation which made it impossible to operate the property as a gas station or redevelop the site. These efforts were reportedly made difficult by the ongoing drought and its effect on the water table. Based on your testimony, the fact that gasoline station equipment has remained in place from March 14, 2013 to the date of this letter, and information provided by the State Water Resources Control Board's *Geotracker* database documenting the ongoing remediation and sampling taking place on this property, the Planning Division will acknowledge that the site has continued to be utilized as a gasoline station between March 14, 2013 and December 11, 2015 (the date of your letter).

Based on the case closed regulatory status of the leaking underground storage case as of November 25, 2015, we find that your letter of clearance was issued on that same date. Accordingly, you have one year from that date, until 5:00 pm on November 25, 2016, in which to commence with the continuation of the operation of a gas station and sale of gasoline at the site in order to continue to maintain the property as a legal nonconforming use. To the extent that you disagree with this determination, you have the right to appeal that decision to the Planning Commission. Appeals and the required filing fee must be filed with the City Clerk within ten (10) calendar days of this letter. The appeals procedure is set forth in

Development Code Sections 18.510 , a copy of which is enclosed for your convenience. The fee is composed of four elements: 1) Appeal fee to Planning Commission = \$99.00, 2) Public Notice in newspaper = \$186.00, 3) Post Boards for Site = \$24.00, 4) Mailed Notice to addresses who are either adjacent to the site or have asked to be notified of any hearings related to the project = \$250.00, for a TOTAL of \$559.00.

If you have any questions or need further assistance, please do not hesitate to call the Planning Department at (925) 671-3152.

Sincerely,



Laura Simpson
Planning Manager

- Exhibit:
- A - August 3, 2012 zoning status letter from Carol Johnson to Tom Nootbar
 - B - December 11, 2015 letter from Tom Nootbar to Victoria Walker
 - C - December 17, 2015 printout of
http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T060130953
 - D - Development Code Section 18.510

cc: Susanne Brown, Senior Assistant City Attorney
Andrew J. Mogensen, Principal Planner
Robert Woods, Chief Building Official
Laura Simpson, Planning Manager
Robert Ovidia, Senior Civil Engineer

CITY OF CONCORD
 1950 Parkside Drive MS/53
 Concord, California 94519-2578
 FAX: (925) 671-3381
 Telephone: (925)671-3152



CITY COUNCIL
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 William D. Shiun, Vice Mayor
 Timothy S. Grayson
 Daniel C. Helix
 Laura M. Hoffmeister
 Mary Rae Lehman, City Clerk
 Thomas J. Weatling, City Treasurer
 Valerie Barone, Interim City Manager

August 3, 2012

Mr. Tom Nootbaar
 Nootbaar Charitable Remainder UniTrust
 PO Box 886
 Alamo, CA 94507-0886

RE: Zoning Status of 2799 Clayton Road

Dear Mr. Nootbaar,

Per our previous discussions, I would like to restate the zoning status for 2799 Clayton Road and the impact the adoption of the new Concord Development Code and revised Zoning Map may have. This property is currently zoned Downtown Business (DB) with "Commercial" overlay. Motor vehicle service or repair (which includes gas stations) is a prohibited use, and has been since the Downtown Business zone was created in 1977. There have been amendments to the original use permit which granted the gas station (UP 66-64) in order to allow a convenience market, and a subsequent use permit (UP27-88) to allow expansion of the convenience market and the addition of a car wash. However, these approval letters all reference the fact that a gas station is not a permitted use in the DB zone, but that said use was allowed to continue as a non-conforming use since it had operated continuously.

As part of the Development Code Update project, the subject property has been designated as Downtown Mixed Use (DMX), and this new zoning will go into effect on August 23, 2012. This zone has a somewhat broader range of permitted uses than the previous Downtown Business zone; however, Auto Services and Repair (including gas stations) continue to be prohibited. In the previous Zoning Ordinance, the standards pertaining to non-conforming uses were unclear and difficult to interpret with the exception that rights to continue non-conforming uses were lost after a use had been discontinued for more than six months. In the new Development Code (which also goes into effect on August 23, 2012) this period has been lengthened to 12 months. This period of discontinuance has also benefitted from the addition of a definition which states that "the Planning Division shall base a determination of discontinuance on evidence including the removal of equipment, furniture, machinery, structures, or other components of the nonconformity, disconnected or discontinued utilities, or no business receipts or records to document continued operation."

I have received a letter from you documenting that the discontinuance of any of these activities has been done without your authorization or ability to control or intervene due to the abandonment and subsequent bankruptcy of your tenant. This is sufficient documentation to establishment your intent to continue the legally nonconforming use of a gas station at 2799 Clayton Road. Further, the City Attorney's Office has advised me that since the nonconforming provisions of the current Zoning Ordinance were superseded on July 24, 2012 when the City Council adopted the new Development Code, staff would not consider the use abandoned until March 14, 2013, such date being provided by you as the day upon which your tenant abandoned the property.

I hope that this letter is sufficient to document the status of the subject property, and is useful in your attempt to find a new tenant.

Regards,

Carol R. Johnson
 Planning Manager

Victoria Walker
Director, Community & Economic Development Department
City of Concord
Concord Civic Center
1950 Parkside Dr. Concord. CA 94519

RE: 2799 Clayton Road, Concord – Nootbaar Charitable Remainder UniTrust

December 11, 2015

Dear Victoria:

I hope that this letter finds you and your family all doing well!

Shirley and I are writing to you with regard to the gas station at 2799 Clayton Road, Concord. As you may be aware, our former tenant defaulted two years into a seven-year lease and declared personal bankruptcy. As a result, the station has had no tenant since March 2012.

Though the station has not been in operation, it has never been "abandoned". Up until this summer it was undergoing extensive remediation under the auspices of the State Fund and the regulatory control of the California Regional Water Quality Board. After nearly fifteen years of remediation, at a cost to California taxpayers of \$1.4 million, we just received a No Further Action / closure letter from the Water Board on November 25.

During the past few years, the station was undergoing ramped-up remediation. As a result, various lines were running along the surface of the property so that it was impossible during this time to operate the property as a gas station, or to redevelop the site. Furthermore, the drought has had a negative, delaying impact on the clean-up efforts due to the drought's effects on the water table.

In February 2013 I received an email from the City's Planning Manager, Carol Johnson, in which she assured us that the pendency of the Water Board clean-up efforts was sufficient evidence that our permitted use of the property has not been discontinued within the meaning of the Concord Development Code:

The fact that the CRWQCB is requiring specific testing take place before the use may be reactivated serves as sufficient evidence that the use has NOT been discontinued. It is often the case that new regulations, particularly those related to protecting the environment, require additional permits or testing. The fact that you are actively seeking these permits provides evidence that the use had not been abandoned.

Additionally, since March 2012 I have kept the City informed of developments out at the site as the remediation process progressed. By my count, I have sent more than 16 emails and letters to the City during that time.

What we are hopeful the City may consider is to recognize that the use of the gas station *never* was "abandoned" during the past 3.5 years, and that the Nootbaars have been undertaking good faith efforts to restore the property to an environmentally safe condition. **We seek a determination by the City that use of the property as a gas station continues to be a legal non-conforming use pursuant to and in accordance with Chapter 18.530 of the Development Code.**

Additionally, we feel there are other valid points for the City to consider regarding this request:

- The highest & best use of this property is as a gas station: a) the maximum selling price will result, which translates into optimal property taxes for the County and City; b) the robust, on-going sales tax revenue so generated;
- While the property was undergoing remediation at the direction of the Water Board, the Nootbaar CRUT continued to renew its annual Business Permits with the City;
- All tanks, lines, dispensers and pumps still exist the property, along with the physical structure;
- The CRUT is paying property taxes, annual tank permit fees, and submitting to the County HazMat division the annual and monthly monitoring reports, as well as conducting weekly, on-site fuel leak tests;
- Area property maintenance and upkeep are conducted on a regular, on-going basis. Along with our property manager, Lori Bungarz, we have kept in steady communication with Sgt. Russ Norris and his staff of the Concord Police;
- PG&E still provides power to the site's building;
- The closest retail gas station is almost a mile away. As you know, the property is located near the Concord BART station, and therefore it would serve a large number of motorists as well as the surrounding residential neighborhood.

Finally, though this does not affect the City, at least directly, the Charitable Trust is designed so that 100% of the proceeds from sale of this property will eventually go (when Shirley passes) to 501(c)(3) charities. The monies are *not* going into the Nootbaar's pockets.

So, Victoria, we would like the City to favorably respond to our request for a determination that the continuing use of the property as a gas station is a legal, non-conforming usage.

Shirley and I would welcome the opportunity to discuss this matter further with you. In the meantime, we wish you & your family a safe, festive and healthy Holiday Season!

Sincerely,

Tom Nootbaar
P.O. Box 886
Alamo, CA 94507-0886
tom.nootbaar@earthlink.net
925-708-1182

cc. Laura Simpson, *Planning Manager*
John Montagh, *Economic Development & Housing Manager*
Robert Woods, *Chief Building Official*

Shirley J. Nootbaar, *Trustee, Nootbaar Charitable Remainder Trust*

STATE WATER RESOURCES CONTROL BOARD
GEOTRACKER

ARCO FOODMART & CARWASH (T060130953) - (MAP) **SIGN UP FOR EMAIL ALERTS**

2799 CLAYTON ROAD
 CONCORD, CA 94519
 CONTRA COSTA COUNTY
 LUST CLEANUP SITE
[PRINTABLE CASE SUMMARY](#) / [CSM REPORT](#)

CLEANUP OVERSIGHT AGENCIES
 SAN FRANCISCO BAY RWQCB (REGION 2) (LEAD) - CASE #: 07-0822
 CASEWORKER: KEVIN BROWN
 CONTRA COSTA COUNTY
 CASEWORKER: SUE LOYD
CUF Claim #: 17220
CUF Priority Assigned: B
CUF Amount Paid: \$1,400,731

Regulatory Profile

CLEANUP STATUS - DEFINITIONS

COMPLETED - CASE CLOSED AS OF 11/25/2015 - [CLEANUP STATUS HISTORY](#)

POTENTIAL CONTAMINANTS OF CONCERN

GASOLINE

POTENTIAL MEDIA OF CONCERN

OTHER GROUNDWATER (USES OTHER THAN DRINKING WATER)

FILE LOCATION

REGIONAL BOARD

BENEFICIAL USE

NONE SPECIFIED

DWR GROUNDWATER SUB-BASIN NAME

Clayton Valley (2-5)

RB WATERSHED NAME

Suisun - Concord - Pittsburg (207.31)

GROUNDWATER MONITORING FREQUENCY

OF WELLS MONITORED - SEMI-ANNUALLY : 11

Site is located in the NE corner of Clayton Rd and The Alameda in Concord, California. Development on Site includes a single-story building with a convenience store and car wash, 3 underground storage tanks (USTs). Land use around the Site is mixed residential / commercial. Since the late-1920s the Site has operated as a service station. In July 1981 all USTs were fiberglass coated then in 1998 they were upgraded. Groundwater monitoring has occurred since 1989

CASE REVIEWS

<u>TITLE / DESCRIPTION</u>	<u>TYPE</u>	<u>REVIEWED BY</u>	<u>DATE REVIEWED</u>	<u>SUMMARY</u>
<u>T.P. Checklist</u>	LTCP Checklist	SAN FRANCISCO BAY RWQCB (REGION 2)	6/30/2015	EFC
<u>09-42 Closure Review</u>	09-42 Closure Review	SAN FRANCISCO BAY RWQCB (REGION 2)	11/17/2009	NEFC

<u>ACTION TYPE</u>	<u>BEGIN DATE</u>	<u>END DATE</u>	<u>PHASE</u>	<u>CONTAMINANT MASS REMOVED</u>	<u>DESCRIPTION</u>
PUMP & TREAT (P&T) GROUNDWATER	9/27/2002		Water		

Regulatory Activities

<u>ACTION TYPE</u>	<u>ACTION</u>	<u>ACTION DATE</u>	<u>RECEIVED / ISSUE DATE</u>
<u>MEW DOCS</u> OTHER REGULATORY ACTIONS	Closure/No Further Action Letter	11/25/2015	11/25/2015
<u>MEW DOCS</u> RESPONSE REQUESTED - OTHER	Request for Closure - Regulator Responded	10/5/2015	10/5/2015
<u>MEW DOCS</u>			

* Indicates a revised due date



	OTHER REGULATORY ACTIONS	Site Visit / Inspection / Sampling	7/29/2015	7/29/2015
	OTHER REGULATORY ACTIONS	File Review - Closure	6/15/2015	6/15/2015
VIEW DOCS	OTHER REGULATORY ACTIONS	Technical Correspondence / Assistance / Other	5/8/2015	5/8/2015
VIEW DOCS	OTHER REGULATORY ACTIONS	Technical Correspondence / Assistance / Other	5/8/2015	5/8/2015
VIEW DOCS	OTHER REGULATORY ACTIONS	Technical Correspondence / Assistance / Other	5/8/2015	5/8/2015
VIEW DOCS	OTHER REGULATORY ACTIONS	Technical Correspondence / Assistance / Other	5/8/2015	5/8/2015
VIEW DOCS	RESPONSE REQUESTED - OTHER	Request for Closure - Regulator Responded	2/9/2015	2/9/2015
VIEW DOCS	RESPONSE REQUESTED - OTHER	Request for Closure - Regulator Responded	8/21/2014	8/21/2014
VIEW DOCS	ENFORCEMENT/ORDERS	Staff Letter	6/18/2014	6/18/2014
	OTHER REGULATORY ACTIONS	Meeting	4/10/2014	4/10/2014
VIEW DOCS	RESPONSE REQUESTED - REPORTS	Well Installation Report	12/24/2013	12/24/2013
	OTHER REGULATORY ACTIONS	Site Visit / Inspection / Sampling	10/1/2013	10/1/2013
VIEW DOCS	RESPONSE REQUESTED - WORKPLANS	Corrective Action Plan / Remedial Action Plan - Addendum - Regulator Responded	8/2/2013	8/2/2013
VIEW DOCS	RESPONSE REQUESTED - REPORTS	Monitoring Report - Quarterly	7/30/2013	6/3/2013
VIEW DOCS	RESPONSE REQUESTED - OTHER	Other Report / Document	6/30/2013	6/4/2013
VIEW DOCS	RESPONSE REQUESTED - REPORTS	Monitoring Report - Semi-Annually	1/30/2013	12/17/2012
	OTHER REGULATORY ACTIONS	File Review - Closure	1/7/2013	1/7/2013
VIEW DOCS	RESPONSE REQUESTED - REPORTS	Monitoring Report - Semi-Annually	7/30/2011	5/19/2011
	OTHER REGULATORY ACTIONS	Technical Correspondence / Assistance / Other	7/25/2011	7/25/2011
VIEW DOCS	RESPONSE REQUESTED - REPORTS	Monitoring Report - Semi-Annually	10/30/2010	11/1/2010
VIEW DOCS	RESPONSE REQUESTED - OTHER	Correspondence	8/31/2010	8/31/2010
VIEW DOCS	ENFORCEMENT/ORDERS	13267 Requirement	6/24/2010	6/24/2010
VIEW DOCS	RESPONSE REQUESTED - REPORTS	Monitoring Report - Semi-Annually	1/31/2010	12/7/2009
VIEW DOCS	ENFORCEMENT/ORDERS	13267 Requirement	7/28/2009	7/28/2009
VIEW DOCS	ENFORCEMENT/ORDERS	13267 Requirement	3/24/2009	3/24/2009
VIEW DOCS	RESPONSE REQUESTED - REPORTS	Monitoring Report - Quarterly	1/30/2009	1/16/2009
VIEW DOCS	RESPONSE REQUESTED - OTHER	Other Report / Document	12/16/2008	12/19/2008
VIEW DOCS	RESPONSE REQUESTED - WORKPLANS	Other Workplan	12/1/2008	12/3/2008
VIEW DOCS		Other Report / Document	10/30/2008	10/30/2008

CASE CLOSURE SUMMARY
Case No. 07-0822

I. Agency Information

November 25, 2015

Agency Name: San Francisco Bay Regional Water Quality Control Board	Address: 1515 Clay Street, Suite 1400
City/State/Zip: Oakland, California 94612	Phone: (510) 622-2358
Responsible Staff Person: Kevin D. Brown, CEG	Title: Engineering Geologist

II. Site Information

Site Facility Name: Arco FoodMart & Car Wash	RWQCB Case No.: 07-0822 Contra Costa County Case No.: -			
Site Facility Address: 2799 Clayton Road, Concord, CA				
URF Filing Date: 11/07/1988				
Global ID No. (GeoTracker): T060130953				
Responsible Parties: Mr. Faramarz Shokouhi-Razi; frankrazi@sbcglobal.net c/o Law Offices of Richard Stoll; richstoll@hotmail.com				
Nootbaar Charitable Remainder UniTrust - Attention: Mrs. Shirley Nootbaar P.O. Box 886, Alamo, CA 94507-0886				
Property Owner: Robert T. Nootbaar, 1551 Civic Drive, Walnut Creek, CA 94596				
Tank #	Size in Gallons	Contents	Removed or Active	Date
1	550	Waste Oil	Removed	1989
2, 3, 4	6,000	Gasoline	Removed	1998
5	6,000	Diesel	Removed	1998
6, 7	8,000	Gasoline	Active	-
8	12,000	Gasoline	Active	-

III. Release and Site Characterization Information

Cause and Type of Release: Leaks from product piping and USTs - soil samples collected and analyzed contained gasoline and diesel constituents		
Site Characterization Complete? Yes	Date Approved by Oversight Agency: 06/01/2014	
Monitoring Wells Installed? Yes	Number: 32	Proper Screened Interval? Yes
Highest Groundwater (GW) Depth (feet below ground surface/fbgs): 17.90 fbgs	Lowest GW Depth: 42.00 fbgs	GW Flow Direction: West to NW
Most Sensitive Current GW Use: No known drinking water supply wells within half a mile radius from Site		
Most Sensitive Potential GW Use: Drinking water source		
Probability of GW Use: Unknown		
Are Drinking Water Wells Affected? No	Hydrologic Unit: Clayton Valley Groundwater Basin	
Is Surface Water Affected? No	Nearest Surface Waters: Elfis Lake is located ~3 000 feet SW; the Contra Costa Canal, a water purveyance system, is located ~2,350 feet SE	
Offsite Beneficial Use Impacts: None identified		
Reports on file? Yes	Where are reports filed? San Francisco Bay Regional Water Quality Control Board Geotracker, and Contra Costa County Health Services Department	

IV. Treatment / Disposal Methods

Material	Amount	Action	Date
Free Product	~21.5 gallons	Removed and transported offsite for disposal. Unknown amount of product treated by an onsite Dual-Phase Extraction (DPE) system	1989 - 2013
Soil	~724 tons	Petroleum-impacted soils were excavated and transported to Soil Safe (Adelanto, CA) and Recology Hay Road (Vacaville, CA) Possible onsite soil reuse during UST removal activities in 1998 (~675 tons)	Various
Groundwater	Sampling purge water (~1,475 gal) Extraction (~5,965,694 gallons removed ~241 lbs. of hydrocarbons)	Transport to ISI (Rio Vista, CA), Lakeland Processing Co. (Santa Fe Springs, CA), Demenno Kerdoon (Compton, CA), and Evergreen Oil Inc. (Newark, CA) for treatment Onsite treatment and disposal to sanitary sewer via permit from Central Contra Costa Sanitary District	Various
Vapor	~4,468 lbs. of hydrocarbons	Multi-Phase Extraction/MPE events Dual-Phase Extraction/DPE system	2006 - 2008 2011 - 2013
Tanks and Piping	Four 6,000-gallon USTs, and one 550-gallon UST	Removed and transported offsite for disposal	1989 and 1998
Barrels/drums	Investigation- and remediation-derived waste	Removed and transported offsite for disposal	Various

Maximum Documented Contaminant Concentrations - Before and After Cleanup

Contaminant	Soil (mg/kg)		Water (µg/L)		Contaminant	Soil (mg/kg)		Water (µg/L)	
	Before	After	Before	After		Before	After	Before	After
TPH (Gasoline)	3,400	<1.0	420,000	7,200	Methyl tert-butyl ether (MTBE)	2.1	<0.05	9,300	220
TPH (Diesel)	11,000	11,000	1,400,000	51,000	tert-butyl alcohol (TBA)	NA	NA	NA	550 ¹
Benzene	160	<0.005	32,600	810	Notes "Before" soil concentrations based on highest detected concentration in soil and groundwater prior to remediation "After" soil and groundwater concentrations based on highest detected results after remedial activities NA - Not Analyzed ¹ MW-13, 3/25/2003				
Toluene	540	<0.005	39,200	380					
Ethylbenzene	150	<0.005	7,890	160					
Xylenes	780	<0.005	38,900	1,100					

V. Closure

Does completed corrective action protect existing beneficial uses per the Basin Plan? Yes
Does completed corrective action protect potential beneficial uses per the Basin Plan? Yes
Does corrective action protect public health for current land use? Yes
Site Management Requirements: The Site is currently an inactive fueling and car wash facility, and has a long use

<p>history as an automotive service and fueling station. Residual contamination in soil and groundwater could pose an unacceptable risk as a result of future construction/redevelopment activities, such as onsite excavation activities, the installation of water wells at or near the Site, or a change to a more sensitive land use. Contractors performing subsurface activities at the Site should be prepared to encounter soil and groundwater contaminated with petroleum hydrocarbons, and any encountered pollution should be managed properly to avoid threats to human health or the environment. Proper management may include sampling, risk assessment, additional cleanup work, mitigation measures, or some combination of these tasks.</p>		
<p>Should corrective action be reevaluated if the land use changes? Yes</p>		
<p>Monitoring Wells, Remediation Wells, and Soil Vapor Probes Destroyed? Yes</p>	<p>Number Destroyed: 30</p>	<p>Number Retained: 0</p>
<p>Enforcement Actions Taken: None</p>		
<p>Enforcement Actions Rescinded: None</p>		

VI. Additional Comments

Historic remedial activities at the Site have included soil excavation, hydrogen peroxide injection, and hand-bailing of free product, mainly diesel. The more recent remediation activities relevant to the current case closure included MPE events, full-scale DPE, groundwater extraction, bio-organic catalyst injections to enhance free product removal, and air sparging.

In 1989, one 550-gallon waste oil tank was removed from the site, along with twenty-two cubic yards of soil. During UST removal activities in 1998, approximately 450 cubic yards of soil were removed. Hydrogen peroxide injections were conducted between June 1992 and December 1994, and again between November 1996 and December 1997. Groundwater extraction was conducted between 2003 and 2009, which withdrew approximately 5,356,440 gallons of groundwater. Between December 2006 and July 2008, ten short-term MPE events removed an estimated 1,021 pounds of volatile petroleum hydrocarbons in the vapor phase and 35 pounds of soluble hydrocarbons in the aqueous phase.

A DPE remediation system operated between 2011 and 2013, which removed approximately 3,446 pounds of vapor phase hydrocarbons and 206 pounds of aqueous phase hydrocarbons. A bio-organic catalyst was injected into Site wells in 2012 and 2013 to enhance DPE extraction removal rates. In January and February 2014, five bioremediation injection events were conducted using live bacteria (LFS-1), nutrients and oxygenated water in conjunction with DPE. To enhance bioremediation, an air sparging system was operated at the site between May and July 2014. Residual impact is primarily heavy hydrocarbon-range impacts located about 30 to 40 feet below the ground surface.

This case qualifies for closure pursuant to the State Water Board's *Low-Threat Underground Storage Tank Case Closure Policy (Policy)*¹. While it does not meet all the low threat closure criteria of the Policy, the Regional Water Board has determined by other criteria that the case is a low-threat site. Specifically, this case meets the Regional Water Board's *Supplemental Guidance*² criteria for low risk case closure, as shown below:

1. The leak has been stopped, and ongoing sources, including petroleum free product, removed or remediated (free product has not been detected since 2013 and has been removed to the extent practicable).
2. The Site has been adequately characterized.
3. The dissolved hydrocarbon plume is not migrating, and groundwater data indicates the plume has been decreasing over time
4. No water wells, deeper drinking water aquifers, surface water, or other sensitive receptors are likely to be negatively impacted from residual contamination at the Site.
5. The Site presents no significant threat to human health (direct measurement of soil gas, documented in a May 31, 2013, report, indicates that soil gas concentrations are below applicable risk-based standards)
6. The Site presents no significant threat to the environment (the property is currently vacant and is not a nuisance)

¹ See State Water Resources Control Board webpage

http://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2012_rs_012_0016ana.pdf

² See Regional Water Board webpage http://www.waterboards.ca.gov/rwqcb2/docs/s_jpp_inst_low_risk_fuel_sites.p

VII. Technical Reports, Correspondence, etc., Reviewed For This Closure Recommendation

<i>Site Assessment and Remediation Well Installation Report - Pangea</i>	4/25/2011
<i>SVE System Startup Results - Pangea</i>	11/8/2011
<i>SVE System Restartup Results - Pangea</i>	11/30/2011
<i>Soil Gas Sampling Report - Pangea</i>	5/31/2013
<i>Workplan to Enhance Remediation of Light Non-Aqueous-Phase Liquids - Pangea</i>	7/24/2013
<i>Additional Site Assessment and Remediation Well Installation Report - Pangea</i>	11/26/2013
<i>Groundwater Monitoring and Remediation Report – 1st Half 2014 and Closure Request</i>	8/9/2014
<i>Verification Monitoring Report – 2nd Half 2014 and Case Closure Request - Pangea</i>	12/2/2014
<i>Verification Monitoring Report – 4th Qtr 2014 and Case Closure Request - Pangea</i>	2/9/2015
<i>NOI To Issue a NFA Letter – SF Bay Regional Water Quality Control Board</i>	5/8/2015
<i>Well Destruction Report - Pangea</i>	10/2/2015

This document and the related CASE CLOSURE LETTER shall be retained by the lead agency as part of the official Site file.

Chapter 18.510 APPEALS AND CALLS FOR REVIEW

Sections:

- 18.510.010 Purpose.
- 18.510.020 Right of appeal.
- 18.510.030 Time limits for appeals and calls for review.
- 18.510.040 Initiation of appeals and calls for review.
- 18.510.050 Procedures for appeals and calls for review.
- 18.510.060 Effective dates.
- 18.510.070 New appeal.

18.510.010 Purpose. SHARE

A. Appeals. To avoid results inconsistent with the purposes of the development code, any decision made in compliance with the development code made by the:

1. Planning division may be appealed to the zoning administrator;
2. Zoning administrator may be appealed to the planning commission; and
3. Planning commission may be appealed to the city council

B. Calls for Review. As an additional safeguard to avoid results inconsistent with the purposes of the development code, any decision of the:

1. Zoning administrator may be called up for review by the planning commission, and
2. Planning commission may be called up for review by the city council.

C. Referral to Planning Commission. When a decision made by the planning division is appealed, the zoning administrator may refer the matter directly to the planning commission for a consideration and determination. [Ord. 12-4. DC 2012 § 122-1216].

18.510.020 Right of appeal. SHARE

An appeal may be initiated by the applicant, property owner, or any interested person. [Ord. 12-4 DC 2012 § 122-1217].

18.510.030 Time limits for appeals and calls for review.  SHARE

A. An appeal of a decision by an applicant or other interested person shall be initiated within 10 calendar days of the date of the decision.

B. When the appeal period ends on a weekend or holiday, the time limit shall be extended to the next working day.

C. Calls for review shall be initiated before the end of the appeal period identified in subsections (A) and (B) of this section, which is the effective date of the decision to be reviewed. [Ord. 12-4. DC 2012 § 122-1218].

18.510.040 Initiation of appeals and calls for review.  SHARE

A. Filing of an Appeal. An appeal accompanied by the fee identified in the city's fee schedule shall be filed with the planning division or city clerk on a form provided and shall state specifically the following information, in addition to any information required by Chapter 2.05 CMC, Article II (Appeals to City Council).

1. The specific determination or interpretation that is claimed to be not in compliance with the purposes of the development code;
2. The specific facts that are claimed to be in error or an abuse of discretion;
3. The specific facts of the record which are claimed to be inaccurate; and
4. The specific decision that is claimed to be unsupported by the record.

B. Calls for Review. A call for review may be filed by a member of the planning commission or the city council to be reviewed in compliance with CDC 18.510.010(B) (Calls for Review) before the effective date of the decision. (See also CMC 2.05.090 (Right of Councilmembers and City Manager to request review).)

C. Effect on Decision. The timely filing of an appeal or call for review shall cause a stay (e.g., shall temporarily vacate all proceedings associated with the matter subject to the appeal) in the effective date of the action or decision from which the appeal or a call for review has been taken until a final decision on the matter has been rendered by the appropriate review authority. [Ord. 12-4. DC 2012 § 122-1219].

18.510.050 Procedures for appeals and calls for review.  SHARE

A. Hearing Date. An appeal or call for review shall be scheduled for a hearing before the appellate body no less than 12 and no more than 45 days of the city's receipt of an appeal (consistent with CMC 2.05.040(6) (Date)), unless both the applicant and appellant consent to a later date.

B. Notice and Public Hearing. See CMC 2.05.040 (Appeal where public notice required), 2.05.050 (Appeal where public notice not required), and 2.05.070 (Procedure).

1. An appeal or call for review hearing shall be a public hearing only if the decision being appealed or reviewed required a public hearing.

2. Notice of a public hearing shall be given in the same manner required for the decision being appealed or reviewed in compliance with Chapter 18.500 CDC (Public Hearings).

3. In addition to providing notice pursuant to subsection (B) of this section, notice shall also be provided to all persons who spoke on the matter at any prior hearings or submitted written comments. Notice to such persons shall be mailed only if they provided their name and address at the time they spoke at the prior hearing.

C. Plans and Materials.

1. At an appeal or call for review hearing, the appellate body shall conduct a hearing "de novo" and may consider new materials and testimony in addition to the same application, plans, and related project materials that were the subject of the original decision.

2. The city clerk shall advise the appellate body as to compliance with this provision.

D. Hearing. At the hearing, the appellate body shall review the record of the decision and hear testimony of the appellant, the applicant, and any other interested party.

E. Decision and Notice.

1. After the hearing, the appellate body shall affirm, modify, or reverse the original decision or remand the matter to the original review authority to cure a deficiency in the record or proceedings.

2. The appellate body's decision shall be supported by the weight of the evidence presented at the hearing.

3. Decisions on appeals or calls for review shall be rendered within 30 calendar days of the close of the hearing.

4. The notice shall be mailed within five working days after the date of the decision to the applicant, the appellant, and any other party requesting notice.

F. Failure to Act. Failure of the appellate body to act within the time limits identified in subsections (A) and (E) of this section shall be deemed affirmation of the original decision. [Ord. 12-4. DC 2012 § 122-1220].

18.510.060 Effective dates.  SHARE

A. Planning Commission Decision. A decision by the planning commission regarding an appeal or call for review shall become final 10 calendar days after the effective date of the decision, unless appealed to the city council in compliance with this chapter.

B. City Council Decision. A decision by the city council regarding an appeal or call for review shall become final on the effective date of the decision. [Ord. 12-4. DC 2012 § 122-1221].

18.510.070 New appeal.  SHARE

Following disapproval of an appeal or certification of a decision called for review, any matter that is the same or substantially the same shall not be considered by the same appellate body within the following 12-month period, unless the disapproval or certification was made without prejudice and so stated in the record. [Ord. 12-4. DC 2012 § 122-1222].

CITY OF CONCORD
PERMIT CENTER
1950 Parkside Drive
Concord, California 94519 2578

Telephone: (925) 671-3454
Fax: (925) 671-3381



March 3, 2016

Adria Giacomelli
Senior Vice President, Retail Leasing & Services
Lockhouse Retail Group Inc.
2099 Mt Diablo Blvd, Suite 206
Walnut Creek, CA 94596

RE: Redevelopment of Gas Station at 2799 Clayton Road, Concord

Dear Mrs. Giacomelli:

As a follow up to our meeting on March 1, 2016 regarding your client's interest in purchasing a legal non-conforming gas station located in the Downtown Mixed Use (DMX) zoning district at 2799 Clayton Road in Concord, the Planning Division has conducted further research regarding your client's proposed redevelopment of the property.

Due to a change of zoning on August 23, 2012, automotive services (including gas stations), car washes, and convenience stores with alcohol sales are no longer permitted in the Downtown Mixed Use (DMX) zoning district. The current standards regarding non-conforming uses are found within Chapter 18.530.040 of the City's Development Code, which states that the nonconforming status of a use, structure or physical improvement shall terminate if discontinued for more than one year. Due to extenuating circumstances surrounding the gas station at 2799 Clayton Road, the Planning division made a formal determination regarding its current legal non-conforming status earlier this year.

As we established in our prior correspondence to the current property owner dated January 5, 2016 (attached), the gasoline station at 2799 Clayton Road has been vacant and without tenancy since March of 2012. According to the State Water Resources Control Board, the gas station had been undergoing remediation which made it impossible to operate the property as a gas station or redevelop the site during this period. These efforts were reportedly made difficult by the ongoing drought and its effect on the water table. Based on the State's regulatory closure of the leaking underground storage case as of November 25, 2015, the City determined that the property owner had one year from that date, until 5:00 pm on November 25, 2016, in which to commence with the continuation of the operation of a gas station and the

sale of gasoline at the site in order to continue to maintain the property as a legal non-conforming use.

During our meeting on March 1, 2016, your client asked the question of what constituted "commencement" in regards to the established November 25, 2016 deadline. The answer to this question is identified in Concord Development Code Section 18.505.020 A(2), which states that a planning permit shall not be deemed "exercised" until 1) either a building or grading permit has been issued and actual construction diligently commenced and has not expired, 2) a certificate of occupancy has been issued or 3) the use is established [in operation] at the site. Operation means continued operation; opening for one day will not satisfy this requirement.

Your client also asked about the possible redevelopment of the convenience store portion of the gas station. As convenience stores without alcohol sales may be permitted in the Downtown Mixed Use (DMX) zoning district and the existing facility has a prior Use Permit, your client may be able to demolish and rebuild the existing building with approval of a Design Review and Amended Use Permit application if the entitlements are exercised prior to the established deadline.

As for the continued sale of alcoholic beverages at the convenience store, the California Department of Alcoholic Beverage Control has informed the Planning Division that the loss of privilege for this property to sell alcoholic beverages ended on September 17, 2013 and that the license was auto-revoked by their agency on October 17, 2013 for failure to renew. That period exceeds the one-year time frame for legal non-conforming uses; as such, there are no "grandfathered rights" and alcohol sales are not permitted. The brief email sent to you by Laura Simpson, Planning Manager, on January 12, 2016 regarding potential alcohol sales was unaware of this information and sent in error.

To the extent that you disagree with a determination made in this letter, you have the right to appeal that decision to the Planning Commission. Appeals and the required filing fees must be filed with the City Clerk within ten (10) calendar days of this letter. The appeals procedure is set forth in Development Code Section 18.510, a copy of which is enclosed for your convenience.

If you have any questions or need further assistance, please contact the Planning Department at (925) 671-3152.

Sincerely,



Andrew J. Mogensen, AICP
Principal Planner

Exhibits: A – January 5, 2016 Planning Division letter to Tom Nootbar
B – Concord Development Code Section 18.510

C – Development Code Section 18.510

cc: Susanne Brown, Senior Assistant City Attorney
Laura Simpson, Planning Manager
Ray Kuzbari, Transportation Manager
Robert Woods, Chief Building Official
Robert Ovadia, Senior Civil Engineer

1950 PARKSIDE DRIVE
CONCORD, CA 94519

City of Concord

EXHIBIT D
USE PERMIT

Date July 28, 1988

NO. UP 27-88

Parcel No.(s) 113-288-005

Applicant Alireza Jahangiri

680-6416/935-9281

1932 Oak Grove Road, Walnut Creek, CA 94598

STREET ADDRESS

CITY

ZIP

The Concord City Planning Commission on July 20, 1988 approved

your application: To increase the floor area of a convenience market within the

existing service station at 2799 Clayton Road from 600 to 1,500 sq. ft.

Location 2799 Clayton Road, Concord, CA

subject to the following conditions:

1. Repair/replace any deficient public improvements along the Clayton Road frontage.
2. Relocate the existing price sign on the corner of Clayton Road and the Alameda outside of the corner visibility triangle. The sign shall be located in the larger landscape planter on this corner.
3. Prior to operation of the convenience market, the project sponsor shall submit a sign program for Design Review Board approval.
4. Provide a landscape plan for Design Review Board approval which provides the following:
 - increased landscaping at the corner as per condition #2.
 - a 4-foot-wide planter between the driveways on Clayton Road.
 - provide minimum 4-foot-wide planters at the base of the existing building along the south and east sides.
 - removal and replacement of the shrub planting located on the north and east property lines.
 - selective pruning of all existing trees at the site.
 - replacement of missing street trees in the existing tree wells on Main Street and The Alameda.
 - a minimum of 2 inches of organic mulch in all planters.
 - provision of an automatic irrigation system for all landscaped areas.

Planning Commission Action is appealable to the City Council if filed within ten (10) calendar days of the action. "Notice of Appeal" form is provided by the Planning Department. No Building Permit may be issued during the appeal process. The Building Division must be contacted prior to start of work on the project and prior to occupancy of the building. If the option granted by this Use Permit is not exercised within one year from the date above, this Use Permit shall become null and void. If any of the above conditions are violated, this Use Permit may be revoked.

(CONTINUED ON PAGE 2)

CONCORD CITY PLANNING COMMISSION

by Edward H. Phillips
Director of Planning

PERMIT CONDITIONS (continued)

Page 2

Date July 28, 1988

U.P.# UP 27-88

5. Prior to use of the building for a convenience market, the project sponsor shall complete and return to the Planning Division, a landscape maintenance agreement for all landscaping at this site.
6. Prior to use of the building for a convenience market the project sponsor shall provide an architectural screen for the propane tank visible from Clayton Road. The design shall coordinate with the color of the existing building and be approved by the Design Review Board.
7. Prior to use of this building for a convenience market, the project sponsor shall provide a permanent trash enclosure designed to match the existing building, the design and location of which shall be approved by the Design Review Board.
8. Prior to issuance of a building permit for a convenience market, the project sponsor shall submit a parking plan for approval by the Design Review Board. The parking area shall be striped prior to operation of the convenience market.

FINDINGS FOR ABOVE APPROVAL:

The proposed use of this existing gas station building for a convenience market is consistent with the General Plan which designates this site for Core-Downtown commercial uses and the land-use map for the Downtown Business District which designates this site for commercial uses.

NOTES:

1. Project must comply with all Municipal Ordinances, Building Division requirements, and Fire District regulations.
 2. OSIP (Off-site Street Improvement) fee of \$4.82 per gross square foot of the additional 900 square feet of commercial space is payable prior to issuance of a Certificate of Occupancy.
 3. Should development costs at this site exceed \$40,000, an art fee equal to one-half of one percent of the total project cost is payable prior to the issuance of a Certificate of Occupancy.
 4. Child-care fee equal to one-half of one percent of the total project cost is payable prior to issuance of a Certificate of Occupancy.
 5. All site improvements for this project are subject to review and approval by the Design Review Board, including the building modifications for the conversion of the service station service bays to a convenience market.
- cc: Robert J. Nootbaar, Nootbaar Realty, 1551 Civic Drive, Walnut Creek, CA 94596
Building Division; Engineering Division; Fire District; Finance Department

If the option granted by this Use Permit is not exercised within one (1) year from above date, this Use Permit will become null and void.

CONCORD CITY PLANNING COMMISSION

by

Edward H. Phillips
Edward H. Phillips
Director of Planning

City of Concord

*Please file in
UP 66-64.*

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PHONE: (415) 671-3152
PLANNING DEPARTMENT

CITY COUNCIL
Ronald K. Mullin, Mayor
Colleen Coll, Vice Mayor
June V. Bulman
Diane Longshore
Stephen L. Weir
Michael T. Uberuaga, City Manager

May 27, 1986

Viri Puri A.I.A.
264 La Quinta Court
Walnut Creek, CA 94598

Re: Occupancy Approval (UP 66-64)
2799 Clayton Road
Parcel 113-288-005
TERMINAL TEXACO

Dear Mr. Puri:

This letter is an administrative approval of your request to establish a convenience store to be run in conjunction with the automotive service station already established at the above referenced premises. This approval is granted with the requirement that your business will be conducted in conformance with the information filed on the Zoning Compliance Fact Sheet submitted to our office on May 20, 1986 and subject to the following conditions:

1. No outside storage is allowed.
2. Any changes in signing for your business requires a permit from the Building Division; sign to conform to the City Sign Ordinance and any approved graphics program for the building. In any case, no advertising signs for the convenience store shall be permitted. Please contact this office if you have questions regarding size or type of sign allowed.
3. The maximum area of the convenience store shall be 600 square feet.

The above items constitute the Planning Department conditions of approval. Also, you may be responsible for the following requirements :

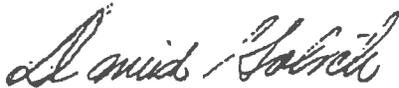
1. Any change of use, any new building construction, any interior improvements or exterior improvements and modifications, including mechanical, electrical and plumbing work, requires a permit from the Building Division of the Public Works Department. Please contact the Building Division at 671-3107 for requirements, permits, and related fees. (Building Division issues permits to either the real property owners or to licensed contractors.)

Viri Puri, A.I.A.
May 27, 1986
Page 2

2. Certain Public Works Department fees may be required. Please contact the Current Development Engineering Division at 671-3101.

The Municipal Code requires each business to obtain a business license prior to transacting or conducting a business in the City of Concord. Please contact the Finance Department at 671-3313 for license information.

Very truly yours,



David Golick
Zoning Administrator

DG:blm

cc: Alna Inc. Kiran Rai, 2799 Clayton Rd., Concord, CA 94519
Building Division
Finance Department

c:2AACopy



**California Department of Alcoholic
Beverage Control**
*License Query System Summary
as of 3/31/2016*

License Information
License Number: 434973
Primary Owner: HAMIDI, SIDIQ
ABC Office of Application: 22 - OAKLAND
Business Name
Doing Business As: ARCO FOOD MART
Business Address
Address: 2799 CLAYTON RD Census Tract: 3310.00
City: CONCORD County: CONTRA COSTA
State: CA Zip Code: 94519
Licensee Information
Licensee: HAMIDI, SIDIQ
License Types
1) License Type: 20 - OFF-SALE BEER AND WINE
License Type Status: AUTO REVOKED
Status Date: 17-OCT-2013 Term: 12 Month(s)
Original Issue Date: 19-JUL-2006 Expiration Date: 30-JUN-2013
Master: Y Duplicate: 0 Fee Code: P40
Condition: OPERATING RESTRICTIONS
Current Disciplinary Action
<i>... No Active Disciplinary Action found ...</i>
Disciplinary History
<i>... No Disciplinary History found ...</i>
Hold Information
<i>... No Active Holds found ...</i>
Escrow
<i>... No Escrow found ...</i>

- - - End of Report - - -

For a definition of codes, view our [glossary](#).