

Meeting Date
2/21/17



AGENDA	
Section	Consent
Item No.	II.A.5

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Appeal of de facto denial by Zoning Official of nonconforming status of 2200 S. Orlando Avenue, Cocoa Beach, Florida.
DEPT/OFFICE:	Planning and Zoning Department through County Manager's Office

Requested Action:
 It is requested that the Board verify the 2015 footprint of 2200 S. Orlando Avenue, Cocoa Beach, Florida, as a legal nonconforming use. Due to a lack of records, the Zoning Official is unable to verify that the 2015 footprint is a legal nonconforming use, this inability to verify operates as a denial.

Summary Explanation & Background:

In 1982, the subject property was zoned BU-1, which was consistent with the future land use designation for business use. In 1982, a site plan was submitted to the County to operate a restaurant on the premises. A restaurant did operate there and has operated there since that time with a CUP for alcohol. In 2006, at the then property owner's request, the property was re-zoned to RU-2-15 and the future land use designation was changed to Residential 15. Since the restaurant continued to operate and was never abandoned, it was able to continue as a non-conforming use pursuant to Sec. 62-1181, Code of Ordinances of Brevard County.

On December 20, 2016, the Board denied Petitioner's re-zoning request to have his property changed from RU-2-15 (Residential) to BU-1 (Commercial) zoning and denied Petitioner's request to amend the Future Land Use Map designation for that property. Prior to the denial of the rezoning and the comprehensive plan amendment, staff indicated that the restaurant could utilize the footprint that existed in 2015, as depicted in the survey attached herein.

Staff indicated, in the staff comments to the Planning and Zoning Board, "[t]he existing restaurant can continue to operate as a nonconforming use in the footprint that existed prior to 2016." (Staff comments at p.3). At the P&Z meeting, Commissioner Barfield stated that the restaurant continued and could continue now. Former Commissioner Fisher then asked staff, "can it still operate?" Staff answered it could operate as a nonconforming use the way it did before the expansion. (Resolution 16-225 at p.16.)

The minutes appear to reflect that the Board approved of the utilization of the 2015 footprint, though the Board did not move to specifically approve the 2015 footprint as a legal nonconforming use. Subsequently, staff has determined that there is not sufficient evidence to verify the legality of the 2015 footprint. Therefore, pursuant to Section 62-301, Brevard County Code of Ordinances, this appeal is being brought before the Board of County Commissioners to determine that the 2015 footprint is a legal nonconforming use.

Clerk to the Board Instructions:

Exhibits Attached: 2015 Boundary Survey & Email from Kim Rezanka

Contract /Agreement (If attached):	Reviewed by County Attorney	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager	Assistant County Manager	Department Director / Extension					
Stockton Whitten							



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

February 22, 2017

M E M O R A N D U M

TO: Robin DiFabio, Planning and Development Director

RE: Item II.A.5., Appeal of De Facto Denial by Zoning Official of Nonconforming Status for 2200 S. Orlando Avenue, Cocoa Beach

The Board of County Commissioners, in regular session on February 21, 2017, verified the 2015 footprint of 2200 S. Orlando Avenue, Cocoa Beach, as a legal nonconforming use, due to a lack of records, and the Zoning Official being unable to verify that the 2015 footprint is a legal nonconforming use that inability to verify operates as a denial.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/ds

cc: County Manager
County Attorney

**AFFIDAVIT FOR VESTED RIGHTS PETITION
Banana Riverfront, LLC**

STATE OF New Jersey
COUNTY OF Ocean

BEFORE ME, the undersigned authority, personally appeared, Robert R. Cooper,
President of Chefs International, Inc., who, after fully being duly sworn, deposes and says:

1. Chefs International, Inc. owned the Property at 2200 S. Orlando Avenue, Cocoa Beach, Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto, from September 30, 1981 to October 16, 2015.

2. Chefs International, Inc., is the holder of that certain Mortgage and Security Agreement, dated October 20, 2015, and recorded on October 26, 2015, in O.R. Book 7480, Page 315, Public Records of Brevard County, Florida, and encumbering lands described in said Mortgage.

3. The attached survey, Exhibit "B", dated September 10, 2015 is an accurate depiction of the buildings and structures that existed at the time of the sale of the Property to Banana Riverfront, LLC.

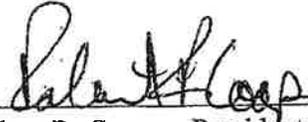
4. At the time of the sale, the restaurant provided for 358 seats inside and 101 on the deck, walkway and gazebo areas on the west side of the restaurant building, for a total of 459 seats.

5. To my knowledge, all structures were properly permitted through Brevard County, or were repairs that Chefs International, Inc. did not believe required permits.

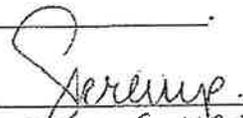
6. The structures and pier sustained substantial damage from the three (3) hurricanes in 2004 and there were many repairs needed.

7. Unfortunately, all records of the permits and structures in the possession of Chefs International, Inc. were destroyed while in storage in New Jersey due to Super Storm Sandy in 2012.

FURTHER AFFIANT SAYETH NOT.


Robert R. Cooper, President

The foregoing instrument was acknowledged before me this 27th day of Dec., 2016, by Robert R. Cooper who (check one) is personally known to me, produced a driver's license (issued by a state of the United States within the last five (5) years) as identification, or produced other identification, to wit: _____


Print Name: S. KREMP
Notary Public, State of New Jersey

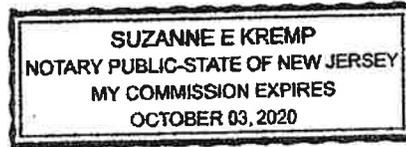


Exhibit "A"

All of the Replat of Avon Court (Plat of Avon Court being recorded in Plat Book 10, Page 39) according to Plat Recorded in Plat Book 10, Page 61, Public Records of Brevard County, Florida, (said property being also described as the South 200 feet of Tract 2 of Titcomb's resubd. of part of Burchfiel's and Bruner's Addition to Crescent Beach, according to plat recorded in Plat Book 8, Page 46) and is further described as follows.

Commence at the Southwest corner of Tract 3 of Titcomb's resubd. according to plat recorded in Plat Book 8, Page 46, thence run West on the prolongation of the South line of said Tract 3 to the center line of State Road A1A for the point of beginning of the land herein described, thence for a first course Continue West on the same course to and into the waters of Banana River thence for a second course run the waters of Banana River Northwesterly to a point which is 200 feet North by right angle measurement from the first course projected; thence for a third course run East and parallel to the first course and 200 feet distant North therefrom to the center line of State Road A1A, thence for a fourth course run the center line of said State Road A1A Southerly to the point of beginning, together with riparian rights in and to the Banana River. Less and Except right of way for A1A as recorded in C.C.M Book 29, Page 100, Public Records of Brevard County, Florida.



AFFIDAVIT FOR VESTED RIGHTS PETITION
Banana Riverfront, LLC

STATE OF FLORIDA
COUNTY OF BREVARD

BEFORE ME, the undersigned authority, personally appeared, A. Van Catterton, Jr., who, after fully being duly sworn, deposes and says:

1. I am a Florida Attorney, Florida Bar No. 510068, and been practicing real property law in Brevard County since 1985.
2. My experience includes real estate transactions, including transactions with the sale of businesses, zoning matters and code enforcement proceedings.
3. From 1985 to 1992, I worked with the Florida Association of Realtors and Florida Bar Association Joint Subcommittee for revision of the FAR/BAR Contract for Sale and Purchase.
4. I am a member of the Real Property, Probate and Trust Law Section of the Florida Bar Association and have served as speaker and panel member on real estate issues and business law matters before local Boards of Realtors, the Space Coast Condominiums Association and numerous other groups in east central Florida.
5. In September of 2015, Banana Riverfront, LLC retained me to research the Property located at 2200 S. Orlando Avenue, Cocoa Beach. On September 10, 2015, I contacted Brevard County Code Enforcement, the County Zoning Department and the County Attorney's office in order to discuss any pending code violations and the buyer's right to continue any nonconforming use.
6. I was advised that if the Property was non-conforming as to use, so long as Banana Riverfront, LLC intended to reopen the restaurant after purchase, Banana Riverfront,

A. Van Catterton, Jr.
Affidavit for Vested Rights Petition

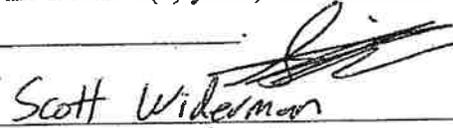
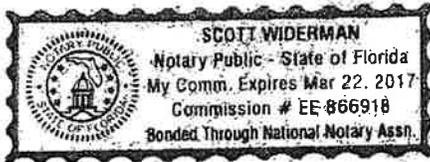
LLC would be allowed to use the Property to the same extent that the Property was in upon the Property' purchase, and with no abandonment of any nonconforming use.

FURTHER AFFIANT SAYETH NOT.



A. Van Catterton, Jr.

The foregoing instrument was acknowledged before me this ___ day of ___, 2016, by A. Van Catterton, Jr., who (check one) is personally known to me, produced a driver's license (issued by a state of the United States within the last five (5) years) as identification, or produced other identification, to wit: _____



Print Name: _____

Notary Public, State of Florida

Subject:

FW: Banana Riverfront, LLC - Vested Rights Petition - withdrawal

From: Kimberly Rezanka [<mailto:kim@cfglawoffice.com>]**Sent:** Wednesday, February 08, 2017 2:29 PM**To:** 'Kimberly Rezanka'; Soss, Matthew**Cc:** Knox, Scott L; DiFabio, Robin M; Commissioner, D2; 'Buz Underill'**Subject:** RE: Banana Riverfront, LLC - Vested Rights Petition - withdrawal

Matt,

Based upon our conversation, I understand that the Zoning Official had denied Banana Riverfront, LLC's request for verification of nonconforming use status.

Please consider this an appeal to the County Commission and advise of the next available Commission date for this appeal

Thank you,
Kim Rezanka