

**CITY OF MIAMI
OFFICE OF ZONING
MEMORANDUM**

TO: Fritznie Jarbath, Attorney at Law
FROM: Barnaby L. Min, Zoning Administrator
DATE: March 22, 2012
RE: Zoning Interpretation
12-0002

This Zoning Interpretation is issued to clarify the procedures for determining what is considered a legal nonconformity. Section 7.2.1(a) of Miami21 defines a nonconformity as “an existing Use, Structure, Lot or site improvement that is in compliance with the zoning regulations that were applicable to it when it was established, and for which all required permits were issued, but which does not conform in whole or in part to the regulations of this Code.” If a legal nonconformity exists, pursuant to Article 7 of Miami21, it is allowed to continue. While it may continue, Section 7.2.1(b) of Miami21 specifically states that nonconformities are not encouraged to expand or enlarge and must eventually fully comply with the requirements of Miami21.

In order to determine if a property has legal nonconforming status, the property owner must demonstrate that the property was legally built pursuant to a prior zoning ordinance. This requires the property owner to submit documentation such as building permits or approved plans demonstrating that the property was legally built. If the property owner cannot provide such documentation, the property cannot be considered legal nonconforming and, as a result, must fully comply with the requirements of Miami21.

In order to determine if a specific use has legal nonconforming status, the property owner must demonstrate that the use was legally authorized pursuant to a prior zoning ordinance and the use has legally continued since that authorization. This requires the property owner to submit documentation such as a Certificate of Use from the City of Miami (“City”) demonstrating that the use was legally authorized. If the property owner cannot provide such documentation, the use cannot be considered legal nonconforming and, as a result, must fully comply with the requirements of Miami21. Please note, a Business Tax Receipt (“BTR”) from the City is not sufficient to demonstrate that the use is legally authorized as a BTR is simply a tax and is not a permit or certificate demonstrating that the use is authorized pursuant to a prior zoning ordinance. Likewise, documentation from Miami-Dade County including the Permitting, Environment and Regulatory Affairs Department (formerly DERM) and Water and Sewer Department, the State of Florida, or the federal government is not sufficient as such documentation does not establish compliance with the City’s zoning ordinance. The Certificate of Use demonstrating the legal nonconforming use must be active unless one of the exceptions as detailed in Section 7.2.6(d) of Miami21 or Section 2-212 of the City Code applies.

If a property cannot establish that it was legally built or is being legally used as detailed above, it cannot be considered a legal nonconformity and must, therefore, fully comply with the requirements of Miami21. Simply because a property has been continuously used is not

justification for establishing the property or the use as a legal nonconformity. Specifically, Section 7.2.1(d) of Miami21 states that the “illegal Use of a property shall not be sufficient to establish the existence of a nonconformity or to create rights in the continuation of a nonconformity until it shall come into compliance with the regulations of this Code.”

With respect to your particular property, you have failed to submit any documentation that the parking lot was legally built under a prior zoning ordinance. Likewise, you have failed to submit any documentation that the parking lot was legally being used and was legally authorized to be used under a prior zoning ordinance. Because no such documentation was submitted, your property and your use cannot be considered a legal nonconformity and is thus, not allowed.

This interpretation shall be final unless appealed to the Planning, Zoning, and Appeals Board within 15 days of the date of its issuance.

cc: Francisco Garcia, Director of Planning
Victoria Mendez, Assistant City Attorney
John A. Greco, Assistant City Attorney
Jose L. Arango, Assistant City Attorney
Office of Zoning
Office of NET