



# MIAMI BEACH

PLANNING DEPARTMENT  
Staff Report & Recommendation

Planning Board

TO: Chairperson and Members  
Planning Board

DATE: June 23, 2009

FROM: Jorge G. Gomez, AICP  
Planning Director

*RG for JGC*

SUBJECT: File No. 1933 – 875 71<sup>st</sup> Street - Gas Station

The applicant, Sunshine Gasoline Distributors Inc is requesting Conditional Use approval to operate a service station in a CD-2, Commercial Medium Intensity zoning district. The gas station has been closed since 2005 and must first be granted a Conditional Use Permit to obtain a Business Tax Receipt.

## ZONING / SITE DATA

*Conditional use*, as defined in Section 114-1, means a use that would not be appropriate generally or without restriction throughout a particular zoning district, but would be appropriate if controlled as to number, area, location, or relation to the neighborhood.

**Zoning:** CD-2, Commercial Medium Intensity zoning district

### **Legal**

**Description:** See Exhibit A attached.

**Land Uses:** There are residential condominium uses to the north; retail uses to the west; a vacant building to the south across 71<sup>st</sup> Street; and the Indian Creek Waterway to the east.

## COMPLIANCE WITH CONDITIONAL USE REVIEW GUIDELINES:

Conditional Uses may be approved in accordance with the procedures and standards set forth in the City Code Art. 4, Sec. 118-191 and Sec. 118-192:

- 1. The Use is consistent with the Comprehensive Plan or Neighborhood Plan if one exists for the area in which the property is located.**

**Consistent** - The request is consistent with the Comprehensive Plan. The stated purpose in the Plan is to provide development opportunities for and to enhance the desirability and quality of existing and/or new medium intensity commercial areas which serve the entire city. The Plan also envisions other uses which may be permitted such as conditional uses specifically authorized in the land use category, which are required to go through a public hearing process as prescribed in the Land Development Regulations of the Code of the City of Miami Beach.

**2. The intended Use or construction will not result in an impact that will exceed the thresholds for the levels of service as set forth in the Comprehensive Plan**

**Consistent** – The proposed use is not anticipated to degrade the LOS for the surrounding area below the thresholds that have been established.

**3. Structures and uses associated with the request are consistent with this Ordinance.**

**Partially Consistent** – A gas station is allowed in the CD-2 district as a conditional use. The gas station has been at the location since 1959; however it stopped operating for about two years, hence the need for a conditional use permit at this time.

**4. Public health, safety, morals and general welfare will not be adversely affected.**

**Consistent** - The gas station has been at the location since 1959, and may be able to meet this objective with properly conditions.

**5. Adequate off-street parking facilities will be provided.**

**Consistent** – Appropriate parking is provided on site to serve its needs

**6. Necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.**

**Partially consistent** - Staff will recommend conditions to mitigate any adverse impacts that may occur on the surrounding neighborhood as a result of the use. The gas station is located in a commercial district although it is adjacent to an apartment building.

**7. The concentration of similar types of uses will not create a negative impact on the surrounding neighborhood. Geographic concentration of similar types of conditional uses should be discouraged.**

**Consistent** – This gas station has been operating at the same location for about 50 years, with a brief hiatus between late 2006 (or early 2007) and early 2009 when it was closed. It seems to serve the needs of neighborhood residents and drivers in general in the Normandy Isle area and beyond. There are no other gas stations in the immediate vicinity.

**STAFF ANALYSIS**

The gas station on the subject parcel was operated by BP Products North America Inc. (formerly, Amoco Oil Company) who obtained a license from the City in the late 1950's. The license and the previous conditional use lapsed when the service station closed during which time BP's interest in the property was sold and assigned to Sunshine Gasoline Distributors, Inc. Subsequent to making its initial application for a license to operate the station, Sunshine learned about the City's requirements for a Conditional Use Permit before issuing a business tax receipt.

At the time of application for a license, the applicant also was made aware of the 40-year building recertification that the property's improvements required. The recertification process

was started by BP during its tenancy and was believed to be completed by the time the property was assigned to Sunshine. However, the applicant later discovered that a minor repair was necessary to complete the recertification. Sunshine had to obtain the 40-year building recertification, which it did on or about April 2, 2009, before proceeding with its application for conditional use approval. As a point of information, under Section 8-11(f) of the Miami-Dade County Code, the owner of a building which has been in existence for forty (40) years or longer is required to have the building inspected for the purpose of determining the general structural condition of the building and the general condition of its electrical systems. Accordingly, the owner must submit a written Recertification Report to the Building Official, prepared by a Florida registered professional engineer or architect, certifying each building or structure is structurally and electrically safe for the specified use for continued occupancy.

The gas station and food mart have been in operation since about January 2008 - 24 hours a day, 7 days a week. The applicant applied for a Business Tax Receipt in October 2008. The application is pending approval of a Conditional Use Permit.

After reviewing the submitted site plan and photos staff believes that the applicant should increase the amount of landscaping on the site to minimize the visual impact of the paving.

Staff research of city records found 3 violations for operating a business without a license, for which the applicant appeared before the Special Master. The applicant appealed and is scheduled for a Progress Report on August 21, 2009.

### **STAFF RECOMMENDATION**

In view of the foregoing analysis, staff recommends that the request for a Conditional Use Permit be approved subject to the following conditions, which address the inconsistencies with the aforementioned Review Guidelines:

1. The Planning Board shall maintain jurisdiction on this Conditional Use Permit. If deemed necessary, at the request of the Planning Director or a Board member, the applicant shall present a progress report to the Board. The Board reserves the right to modify the Conditional Use approval at the time of the progress report in a non-substantive manner, to impose additional conditions to address possible problems, and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
2. The applicant shall be responsible for operating this facility in an orderly, clean and quiet manner so that neighboring residents are not disturbed during the hours of operation. This shall include policing all trash from the site not less than twice daily. The sounding of car alarms, automobile horns, playing of radios or any kind of audio system and screeching of tires shall be prohibited. A warning sign (see attached) shall be posted on the property.
3. The applicant shall resolve outstanding violations and fines, if any, prior to the issuance of a Business Tax Receipt.
4. The amount of existing paving within the property shall be reduced to an absolute minimum by increasing the landscaped areas in order to enhance the property while still allowing adequate access, parking and services to be provided. A revised site plan, and landscape plan, inclusive of uplighting and irrigation providing 100% coverage shall be

- submitted for the review and approval of staff and the work shall be completed prior to the issuance of a Business Tax Receipt. The landscape plan shall also include street trees to be provided in public property as per the City of Miami Beach Master Street Tree Plan.
- 7 Compliance with the aforesaid conditions shall be a prerequisite to obtaining a Certificate of Use or Business Tax Receipt, whichever may occur first.
  - 8 A Conditional Use Permit which lists the aforementioned conditions shall be recorded in the Public Records of Miami-Dade County at the expense of the applicant, prior to the issuance of a Certificate of Use, Certificate of Occupancy or Business Tax Receipt, whichever occurs first; compliance with the aforesaid conditions shall be a prerequisite to obtaining a Certificate of Occupancy.
  - 9 This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
  - 10 The establishment and operation of this Conditional Use Permit shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the Code of the City of Miami Beach, Florida, and shall be subject to enforcement procedures set forth in Section 114-8 of said Code and such enforcement procedures as are otherwise available. Any failure by the applicant to comply with the conditions of this Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use permit.

JGG/ML/KH

c: Gary Held, First Assistant City Attorney

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