

CITY OF AUSTIN
Board of Adjustment/Sign Review Board
Decision Sheet (SPECIAL CALLED MEETING)
RECONSIDERATION REQUEST

DATE: Monday, January 12, 2015

CASE NUMBER: C15-2014-0158

☒ Y ___ Jeff Jack - Chair
☒ Y ___ Michael Von Ohlen
☒ Y ___ Melissa Whaley Hawthorne - Vice Chair
☒ Y ___ Sallie Burchett
☒ Y ___ Ricardo De Camps
☒ Y ___ Brian King
☒ Y ___ Vincent Harding

APPLICANT: Katherine P. Loayza

OWNER: Todd Pearah

ADDRESS: 7501 LAMAR BLVD

INTERPRETATION REQUESTED: The applicant has filed an appeal challenging the Planning and Development Review Department's Land Use Determination regarding legal, nonconforming status of the use at this site in a "TOD-NP", Transit Oriented Development – Neighborhood Plan zoning district. (Brentwood/Highland Combined)

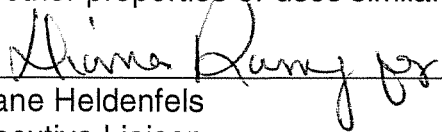
BOARD'S DECISION: The public hearing was closed on Board Member Melissa Hawthorne motion to deny appeal and to affirm staff's determination, Board Member Sallie Burchett second on a 6-1 vote (Board member Bryan King nay); **APPEAL DENIED AND AFFIRM STAFF'S DETERMINATION.**

RECONSIDERATION REQUEST: Jan 12, 2015 - Board Member Michael Von Ohlen motion to Reconsider request, Board Member Sallie Burchett second on a 5-2 vote (Board members Melissa Hawthorne and Vincent Harding nay); **RECONSIDERATION REQUEST GRANTED;** the public hearing was closed on Board Member Bryan King motion to Postpone to March 9, 2015, Board Member Melissa Hawthorne second on a 7-0 vote; **POSTPONED TO MARCH 9, 2015.**

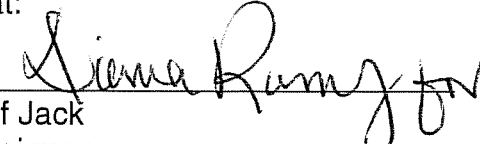
FINDING:

1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that:

2. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because:
3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that:



Leane Heldenfels
Executive Liaison



Jeff Jack
Chairman

PUBLIC HEARING INFORMATION

Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed application. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

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- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (*it may be delivered to the contact person listed on a notice*); or
- appearing and speaking for the record at the public hearing;

and:

- occupies a primary residence that is within 500 feet of the subject property or proposed development;
- is the record owner of property within 500 feet of the subject property or proposed development; or
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A notice of appeal must be filed with the director of the responsible department no later than 10 days after the decision. An appeal form may be available from the responsible department.

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Case Number: C15-2014-0158, 7501 N. Lamar

Contact: Leane Heldenfels, 512-974-2202, leana.heldenfels@austintexas.gov

Public Hearing: Board of Adjustment, January 12th, 2015

Valerie Kunkak

Your Name (please print)

702 W Crestland Dr

Your address(es) affected by this application

Leane Heldenfels

Signature

1/9/2015

Date

Daytime Telephone: 512 689 8783

Comments:

☐ I am in favor
☒ I object

Note: any comments received will become part of the public record of this case

If you use this form to comment, it may be returned to:

City of Austin-Planning & Development Review Department/ 1st Floor

Leane Heldenfels

P. O. Box 1088

Austin, TX 78767-1088

Or you can scan and email to leana.heldenfels@austintexas.gov



JACKSON WALKER L.L.P.


 ATTORNEYS & COUNSELORS

Katherine P. Loayza
 (512) 236-2259 (Direct Dial)
 kloayza@jw.com

December 11, 2014

Members of the Board of Adjustment
 City of Austin, Texas

Re: Reconsideration of the Board of Adjustment (B.O.A.) Action on Dec. 1, 2014
Case #C15-2014-0158 – Texas Title Loans 7501 N. Lamar Blvd.

Dear Board Members:

On behalf of Texas Loan Brokers I, LLP d/b/a Texas Title Loans, I am hereby requesting reconsideration of the Board of Adjustment (the “B.O.A.”) action to deny the appeal of the Use Determination to allow the existing financial services use to be considered a legal non-conforming alternative financial services use. As previously stated, Texas Title Loans has been operating out of the above referenced location for over seven years in compliance with all applicable zoning and site development regulations at the time the tenant occupied the premises and we believe that there is a valid Certificate of Occupancy for the use.

I am requesting the reconsideration of the B.O.A. action in order that denial of the appeal be rescinded and that staff be directed to forward the appeal of the Use Determination to the Building and Fire Code Board for their consideration because the issue of the legal non-conforming use is not strictly a zoning use determination as defined by Section 25-1-197 of the Land Development Code. The use determination that was issued by staff is based solely on the staff position that the use does not have a valid Certificate of Occupancy and therefore cannot be a legal non-conforming use. In this case, the appeal of the use determination acted upon by the B.O.A. is not based upon a zoning issue, but is based upon a building permit issue of what constitutes a valid Certificate of Occupancy. Because of the specific facts of this case, we believe that the more appropriate body to consider this appeal should be the Building and Fire Code Board rather than the B.O.A. and request that they be allowed to consider the case.

The Use Determination as described in the Land Development Code, Section 25-1-197 applies to a formal determination under Section 25-2-2 Determination of Use Classification which describes and defines all land uses. The objective of the use determination is to assign an appropriate classification of land use to a use that is not specifically classified under Subchapter A, Section 25-2-1.

Point: This specific case is not based solely upon the issue of zoning use classification, but is a building permit/Certificate of Occupancy matter as well. We were advised by the Law Department to submit a Use Determination for this specific case and we did so. However, after going through this process, it has become clear, based upon the discussion amongst the B.O.A. members on December 1, 2014, that this is not a zoning use issue as much as a building

permitting issue and the practice of how the Planning and Development Review Department handles use changes and reissuance of Certificates of Occupancy.

A review of the applicable Code language for Use Determinations, Section 25-1-197 (I) describes how a use determination is to be determined. (**Exhibit A** includes the entire Code sections referenced.) Specifically, Sections 25-1-197 (I) (3) and (I) (4) state that the Director must:

...“ explain factors considered by the director in making the determination under Section 25-2-2 (*Determination of Use Classification*), including the similarity of a use to other classified land uses and (I) (4) describe any special characteristics of the use determination, including limitations on size, scale, location or intensity, of the use”.

Section 25-2-2 (D) Determination of Use Classification requires that once a use determination is made by the Director, the Director must notify the Planning Commission and Platting and Zoning Commission of an appeal of the use determination and the final outcome of the appeal and (Sec. 25-2-2-(E) and shall maintain a list of determinations made under this section.

Point: Review of the Code language provides further evidence that this specific case is not just a zoning use determination matter. The question of whether or not Texas Title Loans has a valid Certificate of Occupancy in order to be considered a legal non-conforming use has less to do with zoning land use matters, but more with building permitting issues, as it is clear that at the time the tenant occupied the structure at 7501 N. Lamar Blvd., the existing zoning allowed financial services uses and there was no doubt as to the use classification.

Title 2-1 Boards, specifically outlines the responsibilities of each board. Section 2-1-111 (F) states that the B.O.A. shall:

- (1) hear and decide a request for a variance from the requirements of chapter 25-2 (*Zoning*), except as otherwise provided by the Code;
- (2) hear and decide an appeal of an administrative action under Chapter 25-2 (*Zoning*);
- (3) hear and decide a request for a variance from the requirements of airport zoning regulations under Section 241.034, Local Government Code;
- (4) hear and decide a request for a special exception under Chapter 25-2 (*Zoning*); and
- (5) perform other duties prescribed by ordinance or state law.

Section 2-1-121 Building and Fire Code board of Appeals states the following:

(C) The board shall:

- (1) review any appeal filed in accordance with Title 25 (*Land Development*); and
- (2) hear and decide appeals of orders, decisions, or determinations made by the building official relating to the application and interpretations of the Building Code and Fire Code.

Summary

Due to the specific facts of the use determination request for a legal non-conforming use status for Texas Title Loans, it is evident that the staff denial is based upon the Planning and Development Review Department practice of issuing building permits and Certificates of Occupancy versus a zoning use determination and therefore, I believe that it is more appropriate that the Building and Fire Code Board consider this case. Therefore, I respectfully request that the B.O.A. rescind its prior action and direct staff staff to place this case on the next available Building and Fire Code Board hearing.

Notwithstanding any of the foregoing, the appellant does not waive any position previously taken at B.O.A. hearing December 1, 2014 or in any written materials submitted in connection with that hearing.

Sincerely,

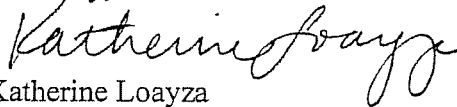

Katherine Loayza

EXHIBIT A

Excerpts from the Land Development Code

Division 2. - Administrative Decisions.

§ 25-1-197 - USE DETERMINATIONS.

(A)

This section applies to a formal determination by the director under Section 25-2-2 (*Determination of Use Classification*) regarding the appropriate classification of a land use that is not specifically classified under Chapter 25-2, Subchapter A (*Zoning Uses*).

(B)

Except as otherwise provided by this section, a use determination may be requested at any time by filing an application on a form provided by the director and by paying a fee established by separate ordinance.

(C)

In addition to any additional information required by the director, an application for a use determination must:

(1)

state whether the determination is requested in connection with a specific project, and if so, reference the application number;

(2)

if the determination is not related to a specific development application, state whether it is requested for a particular address;

(3)

describe the land use(s) for which a determination is sought; and

(4)

include any information that the applicant requests the director to consider in making the use determination, including but not limited to an explanation of the similarities, if any, of the use to other classified uses.

(D)

A use determination for a project that is subject to a pending development application is a "project use determination" and is subject to the requirements of this subsection.

(1)

The director shall determine whether a site plan application requires a use determination under Section 25-2-2 (*Determination of Use Classification*) within the applicable review period required by Section 25-5-114 (*Time Periods for Determination; Notice*) or Section 25-5-143 (*Director's Report*).

(2)

If the director determines that a use determination is required, the applicant must submit a request for a project use determination under Subsection (B) before the application expires.

• (3)

Within 14 days after receiving a request for a project use determination, the director shall issue a determination under Subsection (F) of this section and provide notice of the determination under Section 25-1-133(B) (*Notice of Applications and Administrative Decisions*).

(4)

Any person entitled to notice of a use determination under Section 25-1-133(B) (*Notice of Applications and Administrative Decisions*) may appeal the decision to the Board of Adjustment no later than 14 days after notice is provided.

(E)

A request for a use determination that is not associated with a pending development application is a "non-project use determination" and is subject to the requirements of this subsection.

(1)

A non-project use determination may be requested by anyone, at any time, for a use that requires a determination under Section 25-2-2 (*Use Determination*).

(2)

In addition to the requirements in Subsection (C) of this section, an application for a non-project use determination must include:

(a)

any information requested by the director regarding the nature of the use for which a determination is requested, including the size, scale, or intensity of the use; and

(b)

a specific address, if the applicant intends to rely on the determination in connection with a development application.

(3)

Within 14 days after receiving a request for a non-project use determination, the director shall provide notice of the determination:

(a)

to the applicant and to registered environmental and neighborhood organizations, if the determination is not associated with a specific address; or

(b)

to all parties entitled to notice under Section 25-1-133(A) (*Notice of Applications and Administrative Decisions*), if the determination is associated with a particular address.

(4)

Any person entitled to notice of a non-project use determination under this subsection may appeal the determination to the Board of Adjustment within 14 days.

(F)

The director may not make a decision on an application that is dependent upon a use determination:

(1)

until after the period for appealing the use determination to the Board of Adjustment has run;

(2)

if the use determination is appealed to the Board of Adjustment, until after the board has decided the appeal; or

Members of the B.O.A.
 December 11, 2014
 Page 6

- (3) if a decision of the Board of Adjustment is appealed to district court, until after the district court has decided the appeal.
- (G) Unless a use determination is reversed or modified by the Board of Adjustment, the director shall follow the determination in reviewing subsequent requests for a determination on the same or substantially similar land uses.
- (H) A use determination is not subject to further notification or appeal under this section if it has been considered by the Board of Adjustment in response to an appeal or notice of the determination was previously provided under this section and no appeal was filed.
- (I) A use determination issued by the director under this section must:
 - (1) include all information required under Section 25-1-133(C) (Notice of Applications and Administrative Decisions);
 - (2) state the director's determination regarding how the use is classified under existing use regulations;
 - (3) explain the factors considered by the director in making the determination under Section 25-2-2 (Determination of Use Classification), including the similarity of a use to other classified land uses; and
 - (4) describe any special characteristics of the use determination, including limitations on the size, scale, location or intensity, of the use.
- (J) A use determination issued under this section may not be used to render decisions interpreting site development regulations.

Source: Ord. 20120426-122.

ARTICLE 1. - ZONING USES.

§ 25-2-1 - USE CLASSIFICATIONS.

This article describes and classifies uses in the zoning jurisdiction. The major use categories are residential, commercial, industrial, civic, and agricultural.

Source: Sections 13-2-2 through 13-2-6; Ord. 990225-70; Ord. 031211-11.

§ 25-2-2 - DETERMINATION OF USE CLASSIFICATION.

- (A) The director of the Planning and Development Review Department shall determine the appropriate use classification for an existing or proposed use or activity.
- (B)

If a particular use is not classified within a zoning category or land use definition, the director shall determine the appropriate use classification based on the characteristics of the proposed use and the similarities, if any, of the use to other classified uses.

(C)

If a use requires a determination under Subsection (B) of this section, a person may request that the director issue a formal use determination stating how the use is classified under existing use regulations. A use determination may be appealed to the Board of Adjustment under Section 25-1-197 (Use Determinations).

(D)

The director shall notify the Planning Commission and the Zoning and Platting Commission of the filing of an appeal within 30 days of the filing, and of the disposition of the appeal within 30 days of disposition.

(E)

The director shall maintain a list of determinations made under this section.

Source: Section 13-2-7; Ord. 990225-70; Ord. 010329-18; Ord. 010607-8; Ord. 031211-11; Ord. 20120426-122.

• **§ 2-1-111 - BOARD OF ADJUSTMENT.**

(A)

The Board of Adjustment is established as provided in Local Government Code Chapter 211 (*Municipal Zoning Authority*).

(B)

The board shall be composed of seven members.

(C)

Each board member shall be appointed to serve a two-year term.

(D)

The council may appoint alternate board members to serve in the absence of regular members. An alternate member shall be appointed to serve a two-year term.

(E)

A regular or alternate board member may be removed by council for cause on a written charge after a public hearing.

(F)

The board shall:

(1)

hear and decide a request for a variance from the requirements of Chapter 25-2 (Zoning), except as otherwise provided by the Code;

(2)

hear and decide an appeal of an administrative action under Chapter 25-2 (Zoning);

(3)

hear and decide a request for a variance from the requirements of airport zoning regulations under Section 241.034, Local Government Code;

(4)

hear and decide a request for a special exception under Chapter 25-2 (Zoning); and

(5)

perform other duties prescribed by ordinance or state law.

- (G) The board shall hold meetings at the call of the chairperson and at other times as requested by the board.
- (H) The chairperson, or the acting chairperson in the absence of the chairperson, may administer oaths and compel the attendance of witnesses.
- (I) Each case before the board must be heard by at least 75 percent of the board members.
- (J) The concurring vote of 75 percent of the board members is necessary to:
 - (1) reverse an order, requirement, decision, or determination of an administrative official;
 - (2) decide in favor of an applicant on a matter on which the board is required to pass under Chapter 25-2 (Zoning); or
 - (3) authorize a variation from the terms of Chapter 25-2 (Zoning).
- (K) The board shall prepare minutes of its proceedings. The minutes shall include the vote of each member on each item before the board and shall state if a member is absent or fails to vote on an item.

Source: Ord. 20071129-011; Ord. 20080110-048; Ord. 20080618-030; Ord. 20110526-098.

§ 2-1-121 - BUILDING AND FIRE CODE BOARD OF APPEALS.

- (A) The Building and Fire Code Board of Appeals members should be qualified by experience and training to consider matters relating to building construction and fire prevention. Members may not be City employees.
- (B) The building official and the fire marshal shall serve as ex officio members of the board. The building official shall also serve as the board secretary.
- (C) The board shall:
 - (1) review any appeal filed in accordance with Title 25 (Land Development); and
 - (2) hear and decide appeals of orders, decisions, or determinations made by the building official relating to the application and interpretations of the Building Code and Fire Code.
- (D) The board may not waive a Code requirement.
- (E) The board shall render all decisions and findings in writing, file them with the building official, and send copies to the appellant.
- (F)

A person who is aggrieved by a decision of the board may appeal the decision to the city council under this subsection.

(1)

The appeal shall be made by filing a written notice of appeal with the city clerk. The notice of appeal shall contain:

(a)

the name of the person filing the appeal;

(b)

a background of the case, and a summary of the decision from which the appeal is taken;

(c)

a statement containing facts which show, beyond a reasonable doubt, that the decision appealed from was incorrect because of its inconsistency or conflict with city ordinance or state law, or that a finding of fact by the board was clearly contrary to the evidence before the board; and

(d)

the relief requested from the city council.

(2)

Notice of appeal from a decision of the board shall be filed within 14 days after the date on which the decision appealed from was made.

(3)

If the last day for filing the notice of appeal is a Saturday, Sunday, or City holiday, then the notice of appeal may be filed on the next day which is not a Saturday, Sunday, or City holiday.

(4)

A person filing a notice of appeal under this section shall, on the same day of the filing, mail or deliver a copy of the notice of appeal to the board.

(5)

The city council may, in the disposition of any appeal, waive any requirement of any ordinance in any case in which the council considers the application of the requirement to be unjust and unnecessary to achieve the purposes of the ordinance. The city council may take any other action it deems advisable in deciding any appeal under this section.

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- appearing and speaking for the record at the public hearing; and:
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Case Number: C15-2014-0158, 7501 N. Lamar

Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@austintexas.gov

Public Hearing: Board of Adjustment, December 1st, 2014

Valerie Kunk

Your Name (please print)

☐ I am in favor
☒ I object

702 W Crestland Dr Austin TX 7852

Your address(es) affected by this application

See

Signature

12/29/2014
Date

Daytime Telephone: 512 689 8183

Comments:

Note: any comments received will become part of the public record of this case

If you use this form to comment, it may be returned to:

City of Austin-Planning & Development Review Department/ 1st Floor
Leane Heldenfels

P. O. Box 1088

Austin, TX 78767-1088

Or fax to (512) 974-2202

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Contact: Leane Heldenfels, 512-974-2202, leana.heldenfels@austintexas.gov

Public Hearing: Board of Adjustment, December 1st, 2014

Dana Meadows

Your Name (please print)

☐ I am in favor
☒ I object

Your address(es) affected by this application

631 Amesbury Lane
Karna Meadows

Signature

Date

Daytime Telephone: 512 773 0389

Comments:

The Property this relates to is in front of my back yard neighbor. I object to all variations for the property mentioned above. Our neighbors has been "transferred" + "one the edge for several yrs. now. We have too many. Pay Day Dan says

Note: any comments received will become part of the public record of this case along with your stories too. We are If you use this form to comment, it may be returned to: a-sd +

City of Austin-Planning & Development Review Department/ 1st Floor Leane Heldenfels

P. O. Box 1088

Austin, TX 78767-1088

Or fax to (512) 974-2202

Or scan and email to leana.heldenfels@austintexas.gov

year old residential neighborhood and our home need protect from the bus. mess

CITY OF AUSTIN
Board of Adjustment/Sign Review Board
Decision Sheet (SPECIAL CALLED MEETING)

DATE: Monday, December 1, 2014

CASE NUMBER: C15-2014-0158

<u> Y </u>	Jeff Jack
<u> Y </u>	Stuart Hampton - Michael Von Ohlen (OUT)
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<u> Y </u>	Melissa Hawthorne Motion to Deny appeal
<u> Y </u>	Sallie Burchett 2nd the Motion

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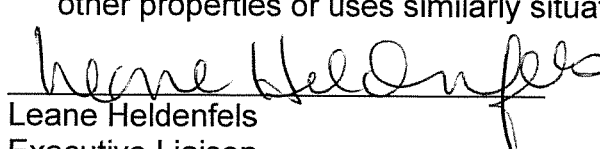
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Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@austintexas.gov

Public Hearing: Board of Adjustment, December 1st, 2014

J. Retha Kinnard
Your Name (please print) 620 and

☐ I am in favor
☒ I object

623 Amesbury Ln
Your address(es) affected by this application

J. Retha Kinnard 22 Nov 14
Signature *Date*

Daytime Telephone: 512 401 1702

Comments: _____

Note: any comments received will become part of the public record of this case

If you use this form to comment, it may be returned to:

City of Austin-Planning & Development Review Department/ 1st Floor
Leane Heldenfels

P. O. Box 1088

Austin, TX 78767-1088

Or fax to (512) 974-2202

Or scan and email to leane.heldenfels@austintexas.gov

CITY OF AUSTIN APPLICATION TO BOARD
OF ADJUSTMENT INTERPRETATIONS
PART I: APPLICANT'S STATEMENT
(Please type)

C15-2014-0158
ROW 11247923
Roll 023310062
(TEAD ✓)

STREET ADDRESS: 7501 N. Lamar

LEGAL DESCRIPTION: Subdivision –
Northway Crest Sec. 2

Lot (s) 1 Block C Outlot _____ Division _____

ZONING DISTRICT: TOD-NP

WE, Katherine Loayza and Jim Nias on behalf of and as authorized Agents for
Texas Loan Brokers I, LLP d/b/a Texas Title Loans affirm that on the 15th day of October,
2014, do hereby apply for an interpretation hearing before the Board of Adjustment.

Planning and Development Review Department interpretation is: The Texas Title Loans use located
at 7501 N. Lamar is not a legal, non-conforming Alternative Financial Services use because the
Certificate of Occupancy issued in 1979, and reissued when Texas Title Loans moved in the
premises in 2007, is no longer a valid Certificate of Occupancy.

We feel the correct interpretation is: The Texas Title Loans use located at 7501 N. Lamar is a
legal, non-conforming Alternative Financial Services use because the Certificate of Occupancy
issued in 1979, and reissued when Texas Title Loans moved in the premises in 2007, is still a
valid Certificate of Occupancy.

NOTE: The board must determine the existence of, sufficiency of and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable findings statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional support documents.

1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that: The staff interpretation of what constitutes a valid Certificate of Occupancy ("CO") is based upon a relatively recent policy change that the CO must list a specific use category from the current Land Development Code ("LDC"), even if that was not the policy or practice when a CO was issued. A CO should not be considered to be automatically invalid just because it does not list a use category from the current LDC. If this is the case, then most of the commercial businesses that have existed in older spaces in Austin pursuant to COs issued over the years are also illegal.

When the present tenant occupied the premises in 2007, the CO was reissued based upon the original building permit and the zoning classification which was in place at the time of the original building permit and CO. Nothing has changed to warrant a new building permit or a new CO. There has been no change in the building use classification (B-2) under the applicable building codes since the original building permit. The 2003 IBC was adopted by the City effective as of January 1, 2006. The 2003 IBC classified financial services as Group B occupancy. There has been no change in the parking ratios or any utility or other site development requirements. (Refer to **Attachment A** for additional information on the history of the project.)

2. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because: The current tenant's use was in compliance with all applicable zoning regulations at the time that the current tenant occupied the premises, and the current tenant has been continuously in operation since 2007 with no Code violations or complaints from the neighborhood.

3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that: The recognition that this use is a legal non-conforming use is treating this property the same as any other pre-existing use that was lawfully in existence before a code change was adopted. A denial of the legal non-conforming use will treat this property unfairly and not in accordance with the accepted practices and policies concerning Certificates of Occupancy at the time that this CO and building permit were issued in 1979 and the CO was reissued for this specific tenant in 2007.

APPLICANT/AGGRIEVED PARTY CERTIFICATE – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed Katherine Loayza / Jim Nias Printed Katherine Loayza/Jim Nias

Mailing Address 100 Congress, Suite 1100

City, State & Zip Austin, Texas, 78701 Phone 512-236-2259

OWNER'S CERTIFICATE – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed



Printed

Joseph Todd Pearah

Mailing Address 12751 State Hwy. 1985

City, State & Zip Mabank, Texas 75156

Phone 214-989-6767



SUBJECT TRACT



PENDING CASE



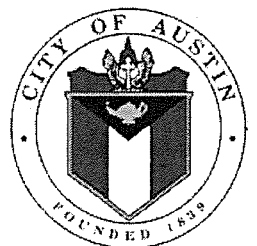
ZONING BOUNDARY

CASE#: C15-2014-0158
Address: 7501 N LAMAR BOULEVARD

1" = 200'

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by CTM for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.





Katherine P. Loayza
(512) 236-2259 (Direct Dial)
kloayza@jw.com

October 15, 2014

Via Hand Delivery

Ms. Leane Heldenfels
Planning and Development Review Department
City of Austin
505 Barton Springs Road
Austin, Texas 78704

Re: Appeal of Use Determination and Board of Adjustment (B.O.A.) Interpretation
For Texas Title Loans - 7501 N. Lamar Blvd.

Dear Leane:

I am submitting the appeal of the Use Determination Notice issued by the Planning and Development Review Department on October 1, 2014 regarding the request for a legal non-conforming Alternative Financial Services Use for the business referenced above. In addition, I am submitting the B.O.A. Interpretation application for the same use.

Please do not hesitate to contact me at 512-236-2259 should you have any questions regarding this appeal submittal.

Sincerely,

Katherine Loayza

Enclosure

NOTICE OF APPEAL INFORMATION

Austin City Code 25-1-461 (see page 2 of 2 for appeal process)



Planning and Development Review Department

Address of Property in Question 7501 N. Lamar

Permit Number - NA-

Appellant Filing Appeal: Texas Loan Brokers I, LLC dba Texas
Title Loans

Relationship to Property - Tenant

Appellant's status as Interested Party - Applicant for Use Determination - Sec. 25-1-197 of the LDC

Appellant Contact Information

Permit Holder Contact Information

Name: Katherine Loayza & Jim Nias (Jackson Walker L.L.P.)

Name: Todd Pearah

Street 100 Congress Ave., Suite 1100

Street 12751 State Hwy 198S

City Austin State TX Zip 78701

City Mabank State TX Zip 75156

Telephone 512-236-2259

Telephone 214-989-6767

E-Mail kloayza@jw.com / jnias@jw.com

E-Mail todd@txtitleloans.net

Date of Decision Being Appealed: October 1, 2014

Date Appeal is Filed: October 15, 2014

Decision being appealed: The Use Determination was made by the Planning and Development Review Department on October 1, 2014 that Texas Title Loans located at 7501 N. Lamar is not a legal non-conforming Alternative Financial Services use because the Certificate of Occupancy ("CO") issued in 1979 and reissued when Texas Title Loans moved into the premises in 2007 is not a valid CO. (See **Attachment A** for further background.)

Reason the appellant believes the decision does not comply with the requirements of the Land Development Code (Title 25): The Certificate of Occupancy ("CO") is still valid. No new work was required for the present tenant to occupy the existing lease space. There was no change in the Building Code Occupancy Group. There was no change in the parking ratios, utility requirements or other site development requirements. The City staff is interpreting the existing CO in light of their recently revised practices and policies, rather than the practices and policies in effect when the CO was issued in 1979 and reissued in 2007. They currently require that a CO must list a specific use category from the current Land Development Code. That was not always the case and previously issued COs should not be arbitrarily deemed invalid. Under that rationale, many if not most older COs would be illegal. (See **Attachment A** for further background.)

Hearing Date:

Board or Commission:

Action on Appeal:

Date of Action

Form Bldg 100 Page 1 of 2

The applicant must complete page 2 of 2 and sign before this application of appeal is complete. The application will not be processed unless the applicant reads and signs page 2 of 2.

Appeal Process

You may appeal by following the following Land Development Code requirements. You must complete the form with all information required as listed below.

ARTICLE 7. APPEALS, VARIANCES, SPECIAL EXCEPTIONS, AND ADJUSTMENTS.

Division 1. Appeals.

§ 25-1-181 STANDING TO APPEAL.

- (A) A person has standing to appeal a decision if:
- (1) the person is an interested party; and
 - (2) a provision of this title identifies the decision as one that may be appealed by that person.
- (B) A body holding a public hearing on an appeal shall determine whether a person has standing to appeal the decision.

Source: Section 13-1-250; Ord. 990225-70; Ord. 030828-65; Ord. 031211-11.

§ 25-1-182 INITIATING AN APPEAL.

An interested party may initiate an appeal by filing a notice of appeal with the responsible director or building official, as applicable, not later than:

- (1) the 14th day after the date of the decision of a board or commission; or
- (2) the 20th day after an administrative decision.

Source: Section 13-1-251(a); Ord. 990225-70; Ord. 031211-11.

§ 25-1-183 INFORMATION REQUIRED IN NOTICE OF APPEAL.

The notice of appeal must be on a form prescribed by the responsible director or building official and must include:

- (1) the name, address, and telephone number of the appellant;
- (2) the name of the applicant, if the appellant is not the applicant;
- (3) the decision being appealed;
- (4) the date of the decision;
- (5) a description of the appellant's status as an interested party; and
- (6) the reasons the appellant believes the decision does not comply with the requirements of this title.

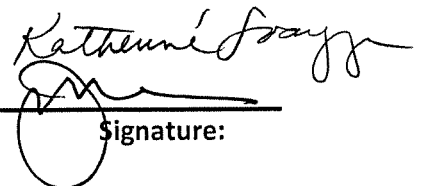
Source: Section 13-1-251(a); Ord. 990225-70; Ord. 010329-18; Ord. 031211-11.

By signing this document, I attest to having read and understand my rights as granted by the Land Development Code.

10/14/2014 Katherine Loayza/JIM NIAS

Date:

Printed Name:

Katherine Loayza

Signature:

REQUESTS FOR INTERPRETATION
(Appeal of an Administrative Decision)

REQUIRED ITEMS FOR A COMPLETE APPLICATION:

The following items are required in order to file an application for interpretation to the Board of Adjustment.

- ☐ A completed application with all information provided. Additional information may be provided as an addendum to the application.
- ☐ Standing to Appeal Status: A letter stating that the appellant meets the requirements as an Interested Party as listed in Section 25-1-131(A) and (B) of the Land Development Code. The letter must also include all information required under 25-1-132(C).
- ☐ Site Plan/Plot Plan drawn to scale, showing present and proposed construction and location of existing structures on adjacent lots.
- ☐ Payment of application fee for residential zoning or for commercial zoning. See Current Fee Schedule (<http://www.austintexas.gov/departments/fees>) for Applicable Fees. Checks should be made payable to the City of Austin.

An appeal of an administrative decision must be filed by the 20th day after the decision is made (Section 25-1-182). Applications which do not include all the required items listed above will not be accepted for filing.

If you have questions on this process contact Leane Heldenfels at

512-974-2202 or leane.heldenfels@austintexas.gov.

**To access the Land Development Code, go to
<http://www.austintexas.gov/departments/online-tools-resources>**

ATTACHMENT A



City of Austin

Founded by Congress, Republic of Texas, 1839
Planning and Development Review Department
One Texas Center, 505 Barton Springs Road 5th Floor
P.O. Box 1088, Austin, Texas 78767
(512) 974-3207

October 1, 2014

Jim Nias
Jackson and Walker, LLP
100 Congress Ave. Suite 100
Austin, TX 78751

Dear Mr. Nias,

The City of Austin Planning and Development Review Department has reviewed the use determination submitted regarding the alternative financial services use known as Texas Title Loans located at 7501 N. Lamar Blvd. You argue that because a certificate of occupancy was issued in 1979 under a previous City Code that the use should be permitted in the TOD-NP zoning as a legal non-conforming use. Your position that the building was issued a CO for a zoning category, GR in 1979 rather than a use does not seem relevant at this time. In 2007 when the use was established at this address a change of use application should have filed changing the land use from retail to financial services. Had that occurred it could be considered a legal, non-conforming use as it would pre-date both the TOD zoning and the establishment of the Alternative Financial Services use. Because this did not occur at this time Texas Title Loans at 7501 N. Lamar is not considered a legal, non-conforming use.

Sincerely,



Jerry Rusthoven, AICP
Manager
Current Planning Division

Cc: Gregory I. Guernsey, AICP, Director, PDRD
George Adams, Assistant Director, PDRD
Brent Lloyd, Law Dept.

C. USE DETERMINATION APPLICATION

PROJECT INFORMATION: DEPARTMENTAL USE ONLY

FILING DATE: _____	FILE NUMBER: _____
DUE DATE: _____	CASE MANAGER: _____
APPLICATION ACCEPTED BY: _____	

APPLICANT INFORMATION

Texas Loan Brokers I, LLC d/b/a Texas Title Loans	
Name: c/o James M. Nias	Telephone: () (512) 236-2350
Address: 100 Congress Avenue, Suite 1100	
City, State and Zip: Austin, Texas 78701	
Email: jnias@jw.com	

Address (if applicable) 7501 N. Lamar Blvd. _____

Is this determination in connection with a specific project? _____ Yes ☒ No

Case number of all related cases (if applicable) N/A _____

Description of proposed use Alternative Financial Services _____

Land Use category sought (from LDC Chapter 25-2, Article 1. Zoning Uses): _____

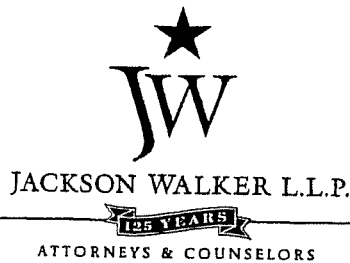
Legal Non-conforming Alternative Financial Services

Existing zoning TOD-NP _____

Case Manager or DAC staff member _____

Include any information for the director to use in consideration of the use determination, including but not limited to an explanation of the similarities, if any, of the use to other classified uses (include additional information and exhibits on separate page if necessary)

See attached correspondence.



James M. Nias
(512) 236-2350 (Direct Dial)
(512) 236-2002 (Fax)
jnias@jw.com

July 2, 2014

Mr. Greg Guernsey
Director
Planning and Development Review Department
City of Austin
505 Barton Springs Road
Austin, Texas 78704

Re: Application for Use Determination for a legal non-conforming Alternative
Financial Services use known as Texas Title Loans at 7501 N. Lamar
Blvd.

Dear Mr. Guernsey:

This firm represents Texas Loan Brokers I, LLC d/b/a/ Texas Title Loans (principal Todd Pearah), which is the tenant of the building located at 7501 N. Lamar Blvd. We are submitting an application for a "Use Determination" pursuant to Austin Land Development Code ("LDC") Section 25-1-197 in regard to the existing Alternative Financial Services use at this location. We request that this existing use be determined to be a legal non-conforming use.

To refresh your memory about this, in January of 2013 Texas Title Loans attempted to register as a Credit Access Business ("CAB") with the City's Office of Telecommunications and Regulatory Affairs, as now required by Chapter 4-12 of the City Code. The CAB registration was denied on or about April 5, 2013. According to Martha Hernandez, Regulatory Monitor in the Office of Telecommunications and Regulatory Affairs, the denial was based on a determination by the Planning and Development Review Department that the certificate of occupancy ("CO") which was submitted with the CAB registration in accordance with the registration requirements was not a valid CO.

On May 31, 2013, there was a meeting in your office concerning the matter. The attendees included Katherine Loayza and myself from this firm, you, Chris Johnson of the Development Assistance Center, the then Building Official Leon Barba, Moses Rodriguez of the Code Compliance Department, and Assistant City Attorney Brent Lloyd by telephone. At the conclusion of that meeting, there was no formal decision issued. Instead, the suggestion was made to Ms. Loayza and me that the matter could possibly be resolved by obtaining variances from the City Board of Adjustment from the setback and spacing requirements which currently apply to Alternative Financial Services uses. We spent approximately a year pursuing that goal. The Board of Adjustment conducted its public hearing on the variance application at its April, 2014 meeting, but postponed action for a month in order to obtain more input from City staff. By the time the matter reappeared on the May, 2014 agenda of the Board of Adjustment, the

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Board had been advised by the City Law Department that the variance process was the wrong process and that the Board was without jurisdiction to act on the variance application. The variance case was postponed for another month. At its June, 2014 meeting, the Board went into an executive session with the Law Department, and when it came out of executive session, announced with no further opportunity for us to be heard that it would not take any action on the variance application. In between the May and June Board meetings, Ms. Loayza and I met with Assistant City Attorneys Brent Lloyd and David Sorola who indicated that a Section 25-1-197 Use Determination application to you was the appropriate process, with the possibility of an appeal of an adverse determination to the Board of Adjustment.

The following support a favorable determination that the existing use at this location is a legal non-conforming use.

(1) The building which has been the business location for Texas Title Loans since 2007 was constructed in 1979. The building permit was submitted on July 5, 1979 (Permit # 183447) for two commercial lease spaces addressed as 7501 and 7503 N. Lamar. A Certificate of Occupancy was issued on October 9, 1979 for that building permit indicating that the occupancy was "Lease Space Retail" (See Exhibit A).

(2) In October of 2007, Texas Title Loans entered into a lease to occupy the space at 7501 N. Lamar for its business which makes short-term car title loans and payday loans. On December 12, 2007 the Watershed Protection and Development Review Department staff re-issued the CO for this location under the original building permit #183447, at the request of H.M. Caskey who is the owner of the property (See Exhibit B). This action was taken by the owner to ensure that the tenant could lawfully occupy the space. Since the use of the property did not trigger a Building Code use and occupancy group change, the description of the use of the property remained the same in the re-issued CO, or "lease space retail." The specific use stated in the re-issued CO is: "1 story concrete (T.L.T. Wall) steel comm. Retail sales bldg." There was no secret about who the occupant was intended to be. A permit application for a sign specifically identifying Texas Title Loans was submitted less than a month later, with apparently no issues being raised about the adequacy of the CO.

(3) The zoning regulations in effect at the time of the 1979 building permit and CO issuance were contained in Chapter 45 of the City Code of 1967. The property was zoned "GR"-General Retail District under Chapter 45 at that time. It is very important to understand that under Chapter 45, the term "retail" referred to a zoning classification, NOT to a specific type of use category. There was no "retail sales" use category in the Code at that time. The flaw in the staff interpretation of the CO thus far has been to interpret it in light of definitions from today's LDC, rather than the Code which existed at the time of the issuance of the CO in 1979.

(4) As you know, the zoning regulations were cumulative under Chapter 45. Attached for your convenience (See Exhibit C) are Section 45-21, "LR" Local Retail Districts and Section 45-22, "GR" General Retail Districts. The GR zoning would have allowed all uses permitted in both LR and GR. The permitted uses in LR included financial services such as banks, as well as offices, and other local retail type uses, although there is no mention of a use category

Mr. Greg Guernsey
July 2, 2014
Page 3

specifically called "retail" or retail sales". Again, at the time, the term "retail" referred to a **zoning** classification, **NOT** a specific type of use category. Therefore, the occupancy described on the CO allowed the range of uses permitted in the GR zoning classification pursuant to the still active building permit at this location. The only reason to obtain a new CO would have been if the Building Code use and occupancy group classification had changed, which it would have for a few of the uses allowed in GR zoning under Chapter 45.

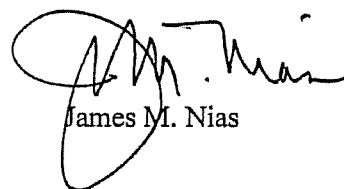
(5) There has been no "change of use" when evaluated under the standards applicable when the CO was issued. Moreover, the Building Code use and occupancy group classification did not change when Texas Title Loans moved in in 2007 and remains B-2. There was no change in parking requirements or utility related requirements when Texas Title Loans moved in in 2007.

(6) The thing which has changed is the zoning, both in terms of the creation of the Alternative Financial Services use category and its special site development criteria, and the recent change in zoning classification to TOD-NP. However, this established use should be considered as legally non-conforming as to both of these things.

(7) Finally, we would note that the amount of information which has been placed on a CO has varied over the years, as has the reference to the use or occupancy. Technically, a CO is supposed to indicate the Building Code use and occupancy group classification. However, it appears that staff is now looking for a current zoning use description to be reflected on COs, in addition to the use and occupancy group pursuant to the Building Code requirements. The fact that the CO in question does not specifically reference the exact current zoning use category does not make the existing use illegal. If the City takes that position, many if not a majority of the existing commercial business uses in Austin would be illegal.

For these reasons, and on the basis of fundamental fairness, we respectfully request a use determination that the existing Alternative Financial Services use located at 7501 N. Lamar Blvd. is a legal non-conforming use.

Sincerely,



James M. Nias

cc: Mr. Brent Lloyd, City of Austin Law Department
Mr. David Sorola, City of Austin Law Department
Ms. Katherine Loayza, firm

EXHIBIT A

Address: 7501 No. LAMAR Permit: 183447 Plat: 313
 Lot: 17503 Block C Subdivision: NORTHWAY CREST SEC. 2
 Outlot -
 Fire Zone: 3 Use Dist. GR & A 1st Occupancy: 1) LEASE SPACE 2) RETAIL LACQUER
LA 47' x 34' 15.0' LA 85' x 110'

7-5-79 Ray Layout		Framing		10-9-79 Final		Commercial	
Foundation	<u>5</u>	Floor joist size & o.c.	<u>STEEL</u>	Bldg. Conn.		Parking	<u>21</u>
Front setback	<u>36'</u>	ceiling joist size & o.c.	<u>STEEL</u>	Room Vent.	<u>/</u>	Exits	<u>X</u>
Total & Min. side yard	<u>47</u>	stud size & o.c.	<u>CONC. TILT WALL</u>	Stairs		Exit lights	<u>X</u>
Side St. Yard	<u>42</u>			Rails	<u>/</u>	Fences	<u>/</u>
Type Const.	<u>II</u>	W. Insulation	<u>WALL</u>	Attic Vent.		Corridors	
Spec. Permit #		Sheetrock		Insulation			
BOA		Commercial Sheetrock		Hood Vent.			
		Occup. Sep.	<u>1 HALL</u>	Glass			
		Thru out		Deadbolts			
				Fireplaces		<u>7501-1599</u>	<u>#</u>
						<u>1-EXIT</u>	<u>CLOSED</u>

Owner: MR. H M CASKEY Contractor: RAYMOND C. TURBS.

7503-1400# SALES AREA
& STORAGE
1-EXIT

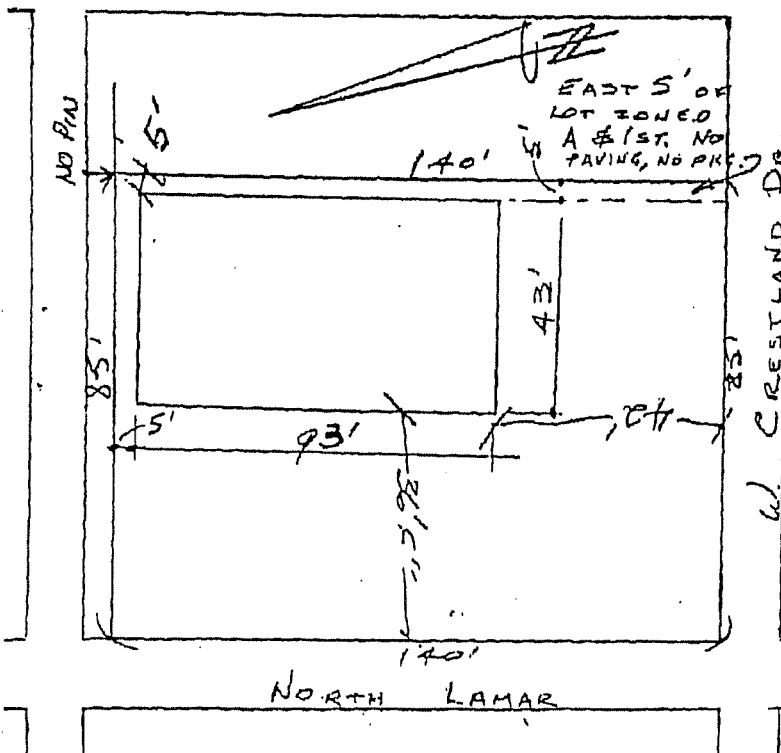
BID 2005 JUNE 77



City of Austin

Clerk RARR Date 7-2-79

Address: 7501 No. LAMAR



193
23
279
372
3999
2000

1 STORY CONCRETE (TILT WALL) &
STEEL RETAIL SHOP BLDG.

Inspector:

Lot 1

Block C

Subdv. Northway Crest
Sec. 2

Certificate Of Occupancy
No. 91495

DEPARTMENT OF BUILDING INSPECTION
City of Austin, Texas

Permit # 183447

Zoning GR & A & 1st.

Plat 313

THIS IS TO CERTIFY THAT THE BUILDING OR STRUCTURE AT THE ADDRESS LISTED BELOW HAS BEEN
INSPECTED AND THE FOLLOWING OCCUPANCY THEREOF IS HEREBY AUTHORIZED.

Address 7501 N. Lamar

Use 1 stry conc tilt wall & steel comm bldg Retail Sales Bldg.

Owner of Land Mr. H.M. Gaskey

Owner of Improvements _____ Address _____

Contractor Raymond Tubbs Address P.O. Box 14140

Plumber A. Parks No. of Gas Meters 1

Remarks _____

Date 10-9-79 By JJ

BUILDING OFFICIAL

BID #2008

OFFICE COPY

SEE REVERSE SIDE

OWNER	Mr. H.M. Caskey	ADDRESS	7501 Lamar (N)
PLAT	313	LOT	1
		BLK	C
SUBDIVISION	Northway Crest sec 2		
OCCUPANCY	Lease Space retail &		
BLDG. PERMIT #	183447	DATE	7-2-79
		OWNERS ESTIMATE	68,000.00
CONTRACTOR	Raymond C. Tubbs		NO. OF FIXTURES
WATER TAP REC#	G04424	SEWER TAP REC#	89074
1 story concrete (T.L.T wall) steel comm & retail			
sales bldg.			

BID 2004

EXHIBIT B



12/12/2007

**REISSUED
CERTIFICATE OF OCCUPANCY**

**WATERSHED PROTECTION AND DEVELOPMENT REVIEW DEPARTMENT
CITY OF AUSTIN, TEXAS**

BUILDING PERMIT NO. 183447

ORIGINAL DATE: 07/02/1979

LEGAL DESCRIPTION AS ON ORIGINAL DOCUMENT: Northway Crest Sec. 2

ZONING: Plat 313 Lot 1 Blk. C

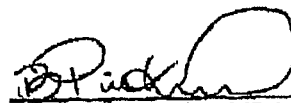
**THIS IS TO CERTIFY THAT, THE BUILDING OR STRUCTURE AT THE ADDRESS
LISTED BELOW WAS INSPECTED AT THE TIME OF THE ORIGINAL DATE FOR
COMPLIANCE WITH THE REQUIREMENTS OF THE AUSTIN CITY CODE FOR USE
LISTED BELOW.**

ADDRESS: 7501 North Lamar Blvd.

USE: 1 story concrete (T.L.T. Wall) steel comm. Retail sales bldg.

OWNER: H.M. Caskey

REMARKS: Lease space retail


Leon Barba, Building Official

BY: L.B.

PLEASE NOTICE

**'NEITHER THE ISSUANCE OF THIS CERTIFICATE NOR THE INSPECTIONS MADE SHALL LESSEN THE
RESPONSIBILITY OR LIABILITY OF ANY PERSON, FIRM OR CORPORATION, OWNING, OPERATING,
CONTROLLING OR INSTALLING ANY APPLIANCE OR MATERIAL UPON THE PREMISES, OR DOING ANY
WORK WHATSOEVER ON SUCH PREMISES.**

**THE CITY OF AUSTIN DOES NOT ASSUME ANY RESPONSIBILITY OR LIABILITY BY REASON OF THE
INSPECTION, OR REINSPECTION, OF THE PREMISES; OR THE ISSUANCE OF THIS "CERTIFICATE OF
OCCUPANCY"; OR BY REASON OF ANY APPROVAL OR DISAPPROVAL.'**

EXHIBIT C

Sec. 45-21. "LR" LOCAL RETAIL DISTRICTS.

In an "LR" local retail district no building or land shall be used and no building shall be erected or structurally altered, unless otherwise provided in this chapter, except for one or more of the uses enumerated in this section. The "LR" local retail district is designed for retail businesses of a local character, and wholesale establishments are not to be located within this district. Permitted uses are enumerated as follows:

- (a) Any use permitted in an "O" office district.
- (b) A bakery.
- (c) Banks, offices, wholesale sales offices and sample rooms.
- (d) Barbershops, beauty shops, and any other personal service shops.
- (e) Cafes, cafeterias, and restaurants in a building.
- (f) Camera shops and photographic supplies.
- (g) Cleaning and pressing shops.
- (h) Drugstores, soda fountains, soft drink stands, and candy and tobacco shops.
- (i) Gasoline service stations when a permit has been secured from the city council. (3-19-59.)
- (j) Grocery stores or grocery stores including the sale of beer and wine, as defined by state law, in unopened containers for off-premises consumption. (11-3-66.)
- (k) Ice vending stations.
- (l) Jewelry and optical goods.
- (m) Meat markets.
- (n) Nurseries and greenhouses.
- (o) Pickup stations for receiving and delivering of articles to be dyed or laundered, but no actual work shall be done on the premises.
- (p) Shoe repair shops.
- (q) Variety stores.
- (r) Washaterias or self-service laundries equipped with automatic washing machines, dryers and ironers of the type customarily found in a home, and where the customer may personally supervise the handling of his laundry.
- (s) Wearing apparel shops.
- (t) Signs, as provided in section 45-31.
- (u) Any other local retail use supplying the everyday shopping needs of the immediate neighborhood and subject to the following conditions:
 - (1) That it be conducted wholly within an enclosed building.
 - (2) That required yards be not used for display, sale or storage of merchandise, or for the storage of vehicles, equipment, containers or waste material.
 - (3) That all merchandise be first hand and be sold at retail on the premises.
 - (4) That there be no manufacturing or processing on the premises.
 - (5) That such use be not objectionable because of odor, excessive light, smoke, dust, noise, vibration, presence of vermin or rodents, or similar nuisances.
- (v) Uses by special permit only, which shall include the following:
 - (1) Trailer courts when in compliance with chapter 33. (3-19-59.)

(2) Uses permitted in the "GR" general retail district without a special permit, when located adjoining or across a public street or alley from a "GR" general retail or less restricted district.

(3) Veterinary hospital or clinic with hospital, clinic, surgical, and commercial dog kennel facilities, provided that: (781207-E)

a. All facilities including commercial dog kennels and runs are located within the building; and (781207-E),

b. The facility uses year-round central air systems; and,

c. The hospital or clinic is limited to the treatment of non-farm animals; and,

d. The facility does not produce a noise level in excess of 50 dB(A) at any property line (the "A" scale shall be used for reference), and no building or any part thereof is located closer than twenty-five feet to any property line abutting a "B" Residence or more restrictive use district. (731115-B.)

(4) A public stable or riding academy when located on a site of not less than ten acres.

(5) A drive-in theater located on a site of not less than ten acres and in compliance with sections 4-10 to 4-27. (3-19-59.)

(6) Motels when in compliance with chapter 33. (3-19-59.)

(7) An apartment dwelling group, in accordance with the provisions concerning apartment dwelling groups in section 45-19. (1-7-60.) (7-17-41; 3-19-59; 1-7-60; 661103-B.)

(8) Town houses, in accordance with the provisions concerning town houses in section 45-18 (g) (8). (731115-A.)

(9) Those uses permitted in an "O" office district by special permit under the same conditions as imposed in "O" office districts. (771006-L).

Sec. 45-22. "GR" GENERAL RETAIL DISTRICTS.

In a "GR" general retail district no building or land shall be used and no building shall be erected or structurally altered, unless otherwise provided in this chapter, except for one or more of the uses enumerated in this section. The "GR" general retail district is designed for retail businesses of general character, and wholesale establishments are not to be located in this district. Permitted uses are enumerated as follows:

- (1) Any use permitted in the "LR" local retail district.
- (2) Ambulance services.
- (3) Aquarium, bird, and pet shops.
- (4) An auto laundry, without boiler, heating, and steam cleaning facilities, in which all washing operations are carried on within a building.
- (5) An auto repair garage, where all work is conducted inside a building not including the open storage of vans, trailers, or trucks.
- (6) Auto seat covers and covering.
- (7) Cafes, cafeterias, and restaurants, with or without drive-in facilities, including the sale, dispensing and otherwise handling of alcoholic beverages, distilled spirits, liquors, wines, vinous liquors, ales, malt liquors, beer, and mixed beverages as those terms are defined in the Texas Liquor Control Act; Articles 666-667, Vernon's Texas Penal Code, direct to the consumer, for consumption on the premises, but not for resale; provided, that the sale of the above beverages is incidental and secondary to the sale of food and similar commodities for human consumption, and that such sale conforms to all the regulations of the state Liquor Control Act with reference to licenses and permits, time and manner of sale; and that the land or building is used at such location as a restaurant or cafe as defined in section 45-1; and that where food or refreshments are served on the premises, outside of the building and within fifty feet of a property line abutting an "O" office or more restricted district, a solid fence, dense hedge or other opaque barrier, not less than six feet high to within ten feet of a street line, is placed on the property lines where the property lines abut or adjoin such "O" office or more restricted district, or any land improved and used for residential purposes; and that where facilities are provided for any loudspeaker or other sound device to broadcast or play on the outside of the building any speech, songs, or instrumental music, the sound level at or beyond the property line shall not exceed fifty decibels. No food or drink may be served to vehicles parked on the public street. (11-3-66; 710610-A.)
- (8) Catering and wedding services.
- (9) Commercial billboards or advertising signs.
- (10) Craft and hobby shops, fix-it shops, bicycle repairs, saw filing, lawn mower sharpening; but without an outside garage.
- (11) Curtain cleaning shops.
- (12) Department stores; sporting goods, novelty, or toy shops.
- (13) Dyeing plants.
- (14) Electrical goods:
 - (a) Electronic wholesale distributors subject to the following limitations:

1. The distributor's place of business shall have no more than ten thousand square feet of floor area.

2. Sales by such distributor of household merchandise (as opposed to industrial merchandise) shall constitute at least eighty per cent of the business of such establishment. (6-11-64.)

- (15) Electrical repairing (domestic equipment and autos).
- (16) Exterminating companies.
- (17) Film developing and printing.
- (18) Furniture repairs and upholstering, with all storage and display within a building.

- (19) Frozen food lockers.
- (20) Hardware, paints, wall paper.
- (21) Household and office furniture, furnishings and appliances.
- (22) Repealed by Ordinance No. 740919-A.
- (23) Motels.
- (24) Motion picture theaters.
- (25) Office buildings.
- (26) Piano and musical instruments.
- (27) Commercial parking garages or any other automobile facility for parking of passenger cars and trucks of less than one-ton capacity only, where the rental of space is on an hourly, daily, weekly, or monthly basis.

(28) Plumbing shops without warehouse facilities (to include store for ordinary repairs but not storage of materials for contracting work).

(29) Rug cleaning shops, chemical type, where all cleaning operations are carried on within a building, where rugs are laid flat, the chemicals mixed with water and applied with a brush, and removed by vacuum cleaning, entirely without the generation of dust.

(30) Seed stores.

(31) Taxi dispatch offices.

(32) Sale of new or used passenger cars and trucks of less than one-ton capacity. Vehicles shall be in operating condition and open display or storage areas shall be surfaced in accordance with the requirement for off-street parking spaces. Separate parts, motors, or other portions of vehicles shall be firsthand and sold at retail and shall be displayed or stored within an enclosed building. (3-19-59.)

(33) Sale of new or used boats. Boats shall be in operating condition and open display or storage areas shall be surfaced in accordance with requirements for off-street parking spaces. Separate parts, motors, or portions of boats shall be firsthand and sold at retail and shall be displayed or stored within an enclosed building. (3-19-59.)

(34) Accessory buildings and uses customarily incident to the uses enumerated in this section. No accessory use shall be construed to permit the keeping of articles or materials in the open or on the outside of the building.

(35) Signs as provided in section 45-31.

(36) Any other retail use, subject to the following conditions:

- (a) That it is conducted wholly within an enclosed building.
- (b) That required yards shall not be used for display, sale, or storage of vehicles, equipment, containers, or waste material.

(c) That all merchandise is firsthand and sold at retail on the premises. (10-4-56.)

(d) That there is no manufacturing or processing; except, that which is incidental and essential to an enterprise in which all merchandise is sold at retail on the premises.

(e) That such use is not objectionable because of odor, excessive light, smoke, dust, noise, vibration, presence of vermin or rodents, or similar nuisances.

(37) Skating rinks or bowling alleys, when air conditioned and designed to reduce external noise to a minimum at the property line.

(38) Trampoline centers. (7-14-60.)

(39) Uses by special permit only, which shall include the following:

(a) Uses permitted in the "C" commercial district without a special permit, and when located adjoining or across a public street or alley from a "C" commercial or less restricted district.

(b) A veterinary hospital or clinic in accordance with the provisions of section 45-21 (v) (3). (731115-B.)

(c) A public stable or riding academy when located on a site of not less than five acres.

(d) Drive-in theaters when located on a site of not less than ten acres and in compliance with sections 4-10 to 4-27. (3-19-59.)

(e) Trailer courts when in compliance with chapter 33. (3-19-59.)

(f) An apartment dwelling group in accordance with the provisions concerning apartment dwelling groups in section 45-19. (1-7-60.) (7-17-41; 10-4-56; 3-19-59; 1-7-60; 6-11-64; 661103-B.)

(g) Town houses, in accordance with the provisions concerning town houses in section 45-18 (g) (8). (731115-A.)

(h) Those uses permitted in an "LR" local retail district by special permit under the same conditions as are imposed in "LR" local retail districts. (771006-L).

Sec. 45-22.1. "AV" Airport District

In an "AV" airport district, no building or land shall be used and no building shall be erected or structurally altered unless otherwise provided in this chapter, except for one or more of the following uses:

(1) Any use directly associated with the operation, service, fueling, repair, storage, charter, sales and rental of aircraft, and/or associated equipment.

(2) Assembly and sale of aircraft, air frames, aircraft engines, aircraft parts and associated components such as radios and navigational equipment.

(3) Airport customer service uses including, but not limited to, auto service stations, restaurants, bookstores, lounges, newsstands, dry cleaning, barbershops, secretarial services, drug stores, flower shops, gift shops, motels and hotels, and other uses and services of similar nature. (790419-I)



Planning and Development Review Department
P.O. Box 1088, Austin, Texas 78767
One Texas Center, 505 Barton Springs Road
Telephone: (512) 974-6370 Fax: (512) 974-2423

Site Development Exemption Request

Site Address:	7439 N LAMAR	DA: 2012-0297
Project Name:	ESPAN / E2 MONEY	
Legal Description:	Lot 1 BIKD Northway Crest Sec 2	
Zoning:	TOD-NP	
Existing Land Use(s):	PAVON SALES	Watershed: Walter
Proposed Land Use(s):	PAVON SALES / FINANCIAL SVCS	Flood Plain? ☐ Yes ☒ No
Brief/General Description of the Development being sought: Add FINANCIAL SVCS TO EXIST. C.O.		

Attach a detailed description of the proposed development in a memorandum or letter and a site plan or survey plan that graphically indicates, but is not limited to:

- | | |
|--|--|
| ☒ existing trees | ☒ limits of construction |
| ☒ buildings | ☒ type of construction |
| ☒ parking areas | ☒ location of construction |
| ☒ roadways/streets | ☒ accessible parking |
| ☒ all areas of impervious cover levels (existing & proposed) | ☒ access route |
| ☒ erosion controls (i.e.: silt fencing, tree protection) | ☒ on-site sewage (septic) systems and drain fields |

I, Andres Dobson (PRINT NAME) do hereby certify that I am the

☐ owner ☒ owner's agent (to act as the owner's agent, written authorization from the owner must be provided) of this described property, and in this capacity, submit this request for exemption from the site plan submittal requirements pursuant to Chapter 25-5-2 of the Austin City Code.

Furthermore, I certify and acknowledge that:

1. Although the proposed development does not require a formal site plan approval, it may require, prior to beginning any site work, the approval of the subdivision or issuance of a building, remodel, and/or demolition permit;
2. Although the proposed development complies with all applicable zoning regulations, it does not prohibit enforcement of restrictive covenants and/or deed restrictions;
3. The approval of this exemption request does not constitute authorization to violate any provisions of the Austin City Code.

NOTE:

According to Rick Argola, there is no CO for a use at 7439 N. Lamar, and there apparently never has been either a building permit or CO issued for this address.

The CO for 7435 N. Lamar does not list Financial Services as a use either.

RPL

City of Austin, Texas



CREDIT ACCESS BUSINESS

REGISTRATION # A2013009116A

Issued to the following location:

TEXAS EZPAWN LP
7435 N LAMAR BLVD
AUSTIN, TX 78752

EXPIRATION DATE: 8/19/2014

This certificate must be renewed annually

*Issued in accordance with provisions of Chapter 4-12 of the Code of the City of Austin.
The Office of Telecommunications & Regulatory Affairs must be notified of all material changes within 45 days of the change.*

Rondelle M. Blackbird

Rondelle Hawkins, Director

THIS CERTIFICATE MUST BE PROMINENTLY POSTED

Address: 7435 N. LAMAR
Lot: 2

Permit: 172455 | Plat: 313

Block D

Subdivision:

Outlot -

NORTHWAY CREST
SUBDIVISION

Fire Zone: 3

Use Dist. C-1

Occupancy:

RETAIL STORE

5-25-78	Layout	7-27-78	Framing	9-13-78	Final	Commercial	
Foundation	8	Floor joist size & o.c.		Bldg. Conn.		Parking	18
Front setback	88	ceiling joist size & o.c.		Room Vent.		Exits	
Total & Min. side yard	0	stud size & o.c.	2x4	Stairs		Exit lights	
REAR St. Yard	25'		2x6 16	Rails		Fences	
				Attic Vent.		Corridors	
Type Const.	III	W. Insulation		Insulation			
Spec. Permit #		Sheetrock		Hood Vent.			
BOA		Commercial Sheetrock		Glass			
		Occup. Sep.	1 hr - 5	Deadbolts			
		Thru out		Fireplaces			
				DORMER			

Owner: PETER W. JASIN

Contractor: SUPERIOR

CONSTRUCTORS

NO EXIT ON EAST 10' ON CROSSLAND

52x60 - 3360

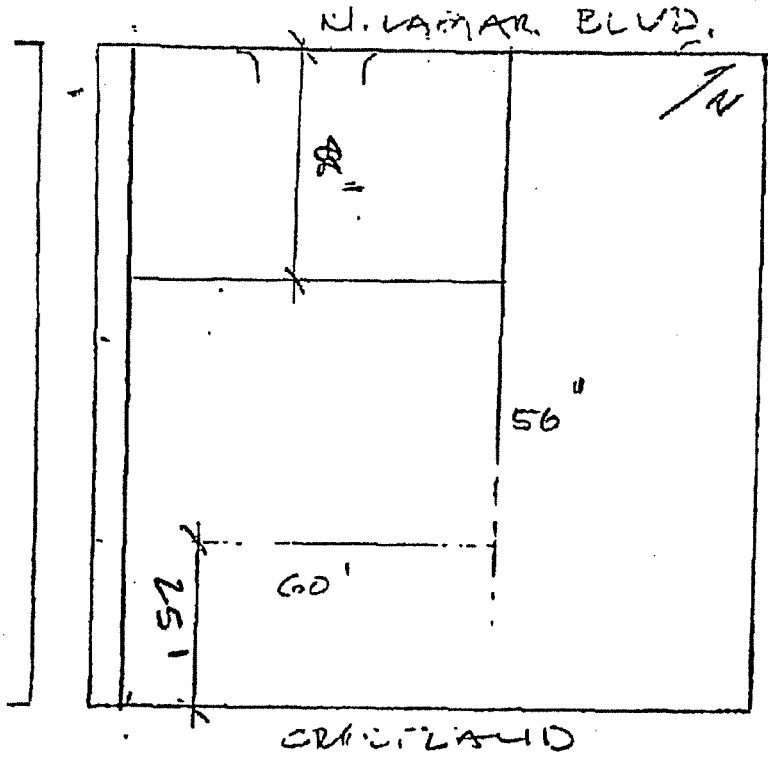
BID 2005 JUNE 77



CITY OF AUSTIN

Clerk EST | Date 9/24/78

Address: N. LAMAR BLVD.



Inspector:

OWNER Peter W. Jasin ADDRESS 7435 North Lamar Blvd.
PLAT 313 LOT 2 B.K. D
SUBDIVISION North Way Crest
OCCUPANCY Retail Store
BLDG. PERMIT #172455 DATE 4-25-78 OWNERS ESTIMATE 48,000
CONTRACTOR Superior Con Structures NO. OF FIXTURES s/p
WATER TAP REC# B 98671 SEWER TAP REC# 84406
One story stall fram comm bldg.

BID 2004



City of Austin

CERTIFICATE OF OCCUPANCY

BUILDING PERMIT NO. 1984-016096 BP

ISSUE DATE: 01/08/1985

BUILDING ADDRESS: 7431 Lamar Boulevard North A 00000

LEGAL DESCRIPTION: Northway Crest Wallace Sur Block Lot L11 B1 D 2 & 10x50ft Jp Northway Crest Wallace Sur L11 B1 D 2 & 10x50ft Jp

PROPOSED OCCUPANCY:

C-1000 Commercial Remodel

Remodel - Repair Comm Bldg To Min Stds 120 Days

BUILDING GROUP / DIVISION: B-2

REMODEL BUILDING SQUARE FOOTAGE: 0

SPRINKLER SYSTEM:

CODE YEAR:

CODE TYPE:

FIXED OCCUPANCY: 0

NON FIXED OCCUPANCY:

CONTRACTOR:

***** **CERTIFICATE OF OCCUPANCY** *****

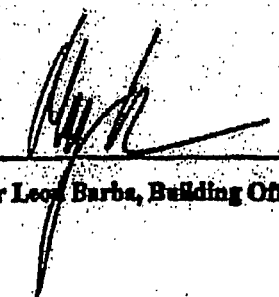
THIS IS TO CERTIFY THAT THE BUILDING OR STRUCTURE AT THE ADDRESS LISTED ABOVE HAS BEEN INSPECTED FOR COMPLIANCE WITH THE REQUIREMENTS OF THE AUSTIN CITY CODE FOR THE GROUP AND DIVISION OF OCCUPANCY LISTED ABOVE.

NEITHER THE ISSUANCE OF THIS CERTIFICATE NOR THE INSPECTIONS MADE SHALL LESSEN THE RESPONSIBILITY OR LIABILITY OF ANY PERSON, FIRM OR CORPORATION

OWNING, OPERATING, CONTROLLING OR INSTALLING ANY APPLIANCE OR MATERIAL UPON THE PREMISES, OR DOING ANY WORK WHATSOEVER ON SUCH PREMISES.

THE CITY OF AUSTIN DOES NOT ASSUME ANY RESPONSIBILITY OR LIABILITY BY REASON OF THE INSPECTION OR REINSPECTION OF THE PREMISES, OR THE ISSUANCE OF THIS "CERTIFICATE OF OCCUPANCY", OR BY ANY REASON OF ANY APPROVAL OR DISAPPROVAL.

BUILDING CODE REVIEWER:


For Leon Barba, Building Official

ATTACHMENT A



City of Austin

Founded by Congress, Republic of Texas, 1839
Planning and Development Review Department
One Texas Center, 505 Barton Springs Road 5th Floor
P.O. Box 1088, Austin, Texas 78767
(512) 974-3207

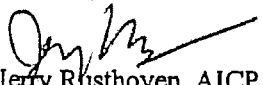
October 1, 2014

Jim Nias
Jackson and Walker, LLP
100 Congress Ave. Suite 100
Austin, TX 78751

Dear Mr. Nias,

The City of Austin Planning and Development Review Department has reviewed the use determination submitted regarding the alternative financial services use known as Texas Title Loans located at 7501 N. Lamar Blvd. You argue that because a certificate of occupancy was issued in 1979 under a previous City Code that the use should be permitted in the TOD-NP zoning as a legal non-conforming use. Your position that the building was issued a CO for a zoning category, GR in 1979 rather than a use does not seem relevant at this time. In 2007 when the use was established at this address a change of use application should have filed changing the land use from retail to financial services. Had that occurred it could be considered a legal, non-conforming use as it would pre-date both the TOD zoning and the establishment of the Alternative Financial Services use. Because this did not occur at this time Texas Title Loans at 7501 N. Lamar is not considered a legal, non-conforming use.

Sincerely,


Jerry Rusthoven, AICP
Manager
Current Planning Division

Cc: Gregory I. Guernsey, AICP, Director, PDRD
George Adams, Assistant Director, PDRD
Brent Lloyd, Law Dept.

C. USE DETERMINATION APPLICATION

PROJECT INFORMATION: DEPARTMENTAL USE ONLY

FILING DATE: _____ FILE NUMBER: _____
DUE DATE: _____ CASE MANAGER: _____
APPLICATION ACCEPTED BY: _____

APPLICANT INFORMATION

Texas Loan Brokers I, LLC d/b/a Texas Title Loans
Name: c/o James M. Nias Telephone: () (512) 236-2350
Address: 100 Congress Avenue, Suite 1100
City, State and Zip: Austin, Texas 78701
Email: jnlas@jw.com

Address (if applicable) 7501 N. Lamar Blvd.

Is this determination in connection with a specific project? _____ Yes ☒ No

Case number of all related cases (if applicable) N/A

Description of proposed use Alternative Financial Services

Land Use category sought (from LDC Chapter 25-2, Article 1. Zoning Uses):
Legal Non-conforming Alternative Financial Services

Existing zoning TOD-NP

Case Manager or DAC staff member

Include any information for the director to use in consideration of the use determination, including but not limited to an explanation of the similarities, if any, of the use to other classified uses (Include additional information and exhibits on separate page if necessary)

See attached correspondence.



James M. Nias
(512) 236-2350 (Direct Dial)
(512) 236-2002 (Fax)
jnias@jw.com

July 2, 2014

Mr. Greg Guernsey
Director
Planning and Development Review Department
City of Austin
505 Barton Springs Road
Austin, Texas 78704

Re: Application for Use Determination for a legal non-conforming Alternative
Financial Services use known as Texas Title Loans at 7501 N. Lamar
Blvd.

Dear Mr. Guernsey:

This firm represents Texas Loan Brokers I, LLC d/b/a/ Texas Title Loans (principal Todd Pearah), which is the tenant of the building located at 7501 N. Lamar Blvd. We are submitting an application for a "Use Determination" pursuant to Austin Land Development Code ("LDC") Section 25-1-197 in regard to the existing Alternative Financial Services use at this location. We request that this existing use be determined to be a legal non-conforming use.

To refresh your memory about this, in January of 2013 Texas Title Loans attempted to register as a Credit Access Business ("CAB") with the City's Office of Telecommunications and Regulatory Affairs, as now required by Chapter 4-12 of the City Code. The CAB registration was denied on or about April 5, 2013. According to Martha Hernandez, Regulatory Monitor in the Office of Telecommunications and Regulatory Affairs, the denial was based on a determination by the Planning and Development Review Department that the certificate of occupancy ("CO") which was submitted with the CAB registration in accordance with the registration requirements was not a valid CO.

On May 31, 2013, there was a meeting in your office concerning the matter. The attendees included Katherine Loayza and myself from this firm, you, Chris Johnson of the Development Assistance Center, the then Building Official Leon Barba, Moses Rodriguez of the Code Compliance Department, and Assistant City Attorney Brent Lloyd by telephone. At the conclusion of that meeting, there was no formal decision issued. Instead, the suggestion was made to Ms. Loayza and me that the matter could possibly be resolved by obtaining variances from the City Board of Adjustment from the setback and spacing requirements which currently apply to Alternative Financial Services uses. We spent approximately a year pursuing that goal. The Board of Adjustment conducted its public hearing on the variance application at its April, 2014 meeting, but postponed action for a month in order to obtain more input from City staff. By the time the matter reappeared on the May, 2014 agenda of the Board of Adjustment, the

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Mr. Greg Guernsey
July 2, 2014
Page 2

Board had been advised by the City Law Department that the variance process was the wrong process and that the Board was without jurisdiction to act on the variance application. The variance case was postponed for another month. At its June, 2014 meeting, the Board went into an executive session with the Law Department, and when it came out of executive session, announced with no further opportunity for us to be heard that it would not take any action on the variance application. In between the May and June Board meetings, Ms. Loayza and I met with Assistant City Attorneys Brent Lloyd and David Sorola who indicated that a Section 25-1-197 Use Determination application to you was the appropriate process, with the possibility of an appeal of an adverse determination to the Board of Adjustment.

The following support a favorable determination that the existing use at this location is a legal non-conforming use.

(1) The building which has been the business location for Texas Title Loans since 2007 was constructed in 1979. The building permit was submitted on July 5, 1979 (Permit # 183447) for two commercial lease spaces addressed as 7501 and 7503 N. Lamar. A Certificate of Occupancy was issued on October 9, 1979 for that building permit indicating that the occupancy was "Lease Space Retail" (See Exhibit A).

(2) In October of 2007, Texas Title Loans entered into a lease to occupy the space at 7501 N. Lamar for its business which makes short-term car title loans and payday loans. On December 12, 2007 the Watershed Protection and Development Review Department staff re-issued the CO for this location under the original building permit #183447, at the request of H.M. Caskey who is the owner of the property (See Exhibit B). This action was taken by the owner to ensure that the tenant could lawfully occupy the space. Since the use of the property did not trigger a Building Code use and occupancy group change, the description of the use of the property remained the same in the re-issued CO, or "lease space retail." The specific use stated in the re-issued CO is: "1 story concrete (T.L.T. Wall) steel comm. Retail sales bldg." There was no secret about who the occupant was intended to be. A permit application for a sign specifically identifying Texas Title Loans was submitted less than a month later, with apparently no issues being raised about the adequacy of the CO.

(3) The zoning regulations in effect at the time of the 1979 building permit and CO issuance were contained in Chapter 45 of the City Code of 1967. The property was zoned "GR"-General Retail District under Chapter 45 at that time. It is very important to understand that under Chapter 45, the term "retail" referred to a **zoning** classification, **NOT** to a specific type of use category. There was no "retail sales" use category in the Code at that time. The flaw in the staff interpretation of the CO thus far has been to interpret it in light of definitions from today's LDC, rather than the Code which existed at the time of the issuance of the CO in 1979.

(4) As you know, the zoning regulations were cumulative under Chapter 45. Attached for your convenience (See Exhibit C) are Section 45-21, "LR" Local Retail Districts and Section 45-22, "GR" General Retail Districts. The GR zoning would have allowed all uses permitted in both LR and GR. The permitted uses in LR included financial services such as banks, as well as offices, and other local retail type uses, although there is no mention of a use category

Mr. Greg Guernsey
July 2, 2014
Page 3

specifically called "retail" or retail sales". Again, at the time, the term "retail" referred to a **zoning** classification, **NOT** a specific type of use category. Therefore, the occupancy described on the CO allowed the range of uses permitted in the GR zoning classification pursuant to the still active building permit at this location. The only reason to obtain a new CO would have been if the Building Code use and occupancy group classification had changed, which it would have for a few of the uses allowed in GR zoning under Chapter 45.

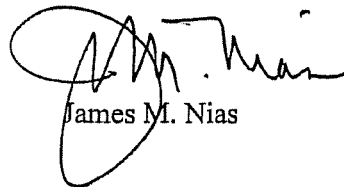
(5) There has been no "change of use" when evaluated under the standards applicable when the CO was issued. Moreover, the Building Code use and occupancy group classification did not change when Texas Title Loans moved in in 2007 and remains B-2. There was no change in parking requirements or utility related requirements when Texas Title Loans moved in in 2007.

(6) The thing which has changed is the zoning, both in terms of the creation of the Alternative Financial Services use category and its special site development criteria, and the recent change in zoning classification to TOD-NP. However, this established use should be considered as legally non-conforming as to both of these things.

(7) Finally, we would note that the amount of information which has been placed on a CO has varied over the years, as has the reference to the use or occupancy. Technically, a CO is supposed to indicate the Building Code use and occupancy group classification. However, it appears that staff is now looking for a current zoning use description to be reflected on COs, in addition to the use and occupancy group pursuant to the Building Code requirements. The fact that the CO in question does not specifically reference the exact current zoning use category does not make the existing use illegal. If the City takes that position, many if not a majority of the existing commercial business uses in Austin would be illegal.

For these reasons, and on the basis of fundamental fairness, we respectfully request a use determination that the existing Alternative Financial Services use located at 7501 N. Lamar Blvd. is a legal non-conforming use.

Sincerely,



James M. Nias

cc: Mr. Brent Lloyd, City of Austin Law Department
Mr. David Sorola, City of Austin Law Department
Ms. Katherine Loayza, firm

EXHIBIT A

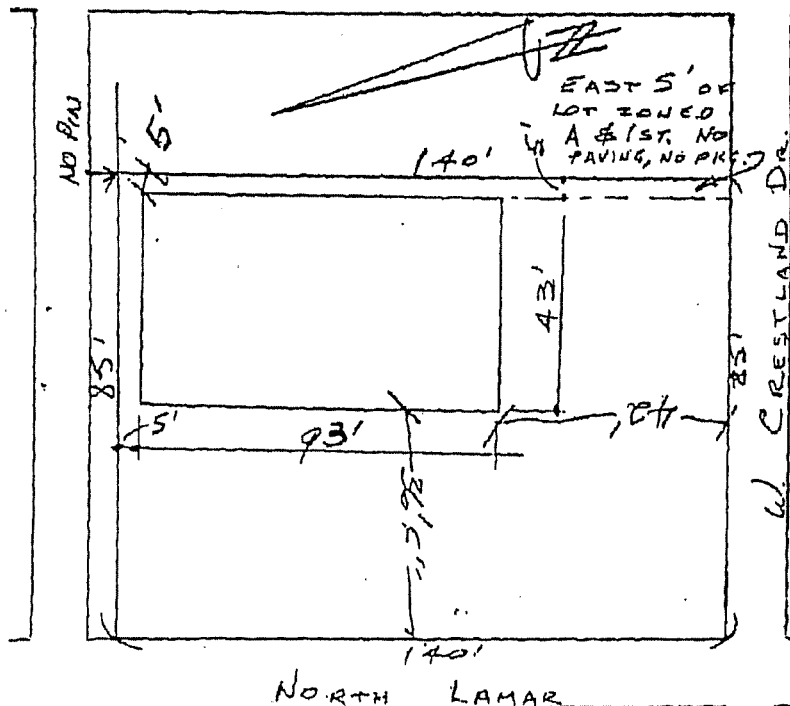
7503-1400 # SALES AREA
STORAGE
- EXIT



City of Austin

Clerk ~~RARR~~, Date ~~7-2-79~~

Address: 7501 No. LAMAR


$$\begin{array}{r} 193 \\ \times 3 \\ \hline 279 \\ 372 \\ \hline 3999 \end{array}$$

1 STORY CONCRETE (TILT WALL) &
STEEL RETAIL SHOP BLDG.

Inspector:

Lot 1

Block C

Subdv. Northway Crest
Sec. 2

Certificate Of Occupancy
No. 91495

DEPARTMENT OF BUILDING INSPECTION
City of Austin, Texas

Permit # 183447

Zoning GR & A & 1st.

Plat 313

THIS IS TO CERTIFY THAT THE BUILDING OR STRUCTURE AT THE ADDRESS LISTED BELOW HAS BEEN
INSPECTED AND THE FOLLOWING OCCUPANCY THEREOF IS HEREBY AUTHORIZED.

Address 7501 N. Lamar

Use 1 stry conc tilt wall & steel comm bldg Retail Sales Bldg.

Owner of Land Mr. H.M. Caskey

Owner of Improvements _____

Contractor Raymond Tubbs

Address P.O. Box 14140
78761

Plumber A. Parks

No. of Gas Meters 1

Remarks _____

Date 10-9-79

BUILDING OFFICIAL

By JJ

BID #2008

OFFICE COPY

SEE REVERSE SIDE

OWNER	Mr. H.M. Caskey	ADDRESS	7501 Lamar (N)
PLAT	313	LOT	1
		BLK.	C
SUBDIVISION	Northway Crest sec 2		
OCCUPANCY	Lease Space retail &		
BLDG. PERMIT #	183447	DATE	7-2-79
		OWNERS ESTIMATE	68,000.00
CONTRACTOR	Raymond C. Tubbs		NO. OF FIXTURES
WATER TAP REC#	G04424	SEWER TAP REC#	89074
1 story concrete (T.L.T wall) steel comm & retail			
sales bldg.			

BID 2004

EXHIBIT B



12/12/2007

**REISSUED
CERTIFICATE OF OCCUPANCY**

**WATERSHED PROTECTION AND DEVELOPMENT REVIEW DEPARTMENT
CITY OF AUSTIN, TEXAS**

BUILDING PERMIT NO. 183447

ORIGINAL DATE: 07/02/1979

LEGAL DESCRIPTION AS ON ORIGINAL DOCUMENT: Northway Crest Sec. 2

ZONING: Plat 313 Lot 1 Blk. C

**THIS IS TO CERTIFY THAT, THE BUILDING OR STRUCTURE AT THE ADDRESS
LISTED BELOW WAS INSPECTED AT THE TIME OF THE ORIGINAL DATE FOR
COMPLIANCE WITH THE REQUIREMENTS OF THE AUSTIN CITY CODE FOR USE
LISTED BELOW.**

ADDRESS: 7501 North Lamar Blvd.

USE: 1 story concrete (T.L.T. Wall) steel comm. Retail sales bldg.

OWNER: H.M. Caskey

REMARKS: Lease space retail


Leon Barba, Building Official

BY: L.B.

PLEASE NOTICE

**'NEITHER THE ISSUANCE OF THIS CERTIFICATE NOR THE INSPECTIONS MADE SHALL LESSEN THE
RESPONSIBILITY OR LIABILITY OF ANY PERSON, FIRM OR CORPORATION, OWNING, OPERATING,
CONTROLLING OR INSTALLING ANY APPLIANCE OR MATERIAL UPON THE PREMISES, OR DOING ANY
WORK WHATSOEVER ON SUCH PREMISES.**

**THE CITY OF AUSTIN DOES NOT ASSUME ANY RESPONSIBILITY OR LIABILITY BY REASON OF THE
INSPECTION, OR REINSPECTION, OF THE PREMISES; OR THE ISSUANCE OF THIS "CERTIFICATE OF
OCCUPANCY"; OR BY REASON OF ANY APPROVAL OR DISAPPROVAL.'**

EXHIBIT C

Sec. 45-21. "LR" LOCAL RETAIL DISTRICTS.

In an "LR" local retail district no building or land shall be used and no building shall be erected or structurally altered, unless otherwise provided in this chapter, except for one or more of the uses enumerated in this section. The "LR" local retail district is designed for retail businesses of a local character, and wholesale establishments are not to be located within this district. Permitted uses are enumerated as follows:

- (a) Any use permitted in an "O" office district.
- (b) A bakery.
- (c) Banks, offices, wholesale sales offices and sample rooms.
- (d) Barbershops, beauty shops, and any other personal service shops.
- (e) Cafes, cafeterias, and restaurants in a building.
- (f) Camera shops and photographic supplies.
- (g) Cleaning and pressing shops.
- (h) Drugstores, soda fountains, soft drink stands, and candy and tobacco shops.
- (i) Gasoline service stations when a permit has been secured from the city council. (3-19-59.)
- (j) Grocery stores or grocery stores including the sale of beer and wine, as defined by state law, in unopened containers for off-premises consumption. (11-3-66.)
- (k) Ice vending stations.
- (l) Jewelry and optical goods.
- (m) Meat markets.
- (n) Nurseries and greenhouses.
- (o) Pickup stations for receiving and delivering of articles to be dyed or laundered, but no actual work shall be done on the premises.
- (p) Shoe repair shops.
- (q) Variety stores.
- (r) Washaterias or self-service laundries equipped with automatic washing machines, dryers and ironers of the type customarily found in a home, and where the customer may personally supervise the handling of his laundry.
- (s) Wearing apparel shops.
- (t) Signs, as provided in section 45-31.
- (u) Any other local retail use supplying the everyday shopping needs of the immediate neighborhood and subject to the following conditions:
 - (1) That it be conducted wholly within an enclosed building.
 - (2) That required yards be not used for display, sale or storage of merchandise, or for the storage of vehicles, equipment, containers or waste material.
 - (3) That all merchandise be first hand and be sold at retail on the premises.
 - (4) That there be no manufacturing or processing on the premises.
 - (5) That such use be not objectionable because of odor, excessive light, smoke, dust, noise, vibration, presence of vermin or rodents, or similar nuisances.
- (v) Uses by special permit only, which shall include the following:
 - (1) Trailer courts when in compliance with chapter 33. (3-19-59.)

(2) Uses permitted in the "GR" general retail district without a special permit, when located adjoining or across a public street or alley from a "GR" general retail or less restricted district.

(3) Veterinary hospital or clinic with hospital, clinic, surgical, and commercial dog kennel facilities, provided that: (781207-E)

a. All facilities including commercial dog kennels and runs are located within the building; and (781207-E),

b. The facility uses year-round central air systems; and,

c. The hospital or clinic is limited to the treatment of non-farm animals; and,

d. The facility does not produce a noise level in excess of 50 dB(A) at any property line (the "A" scale shall be used for reference), and no building or any part thereof is located closer than twenty-five feet to any property line abutting a "B" Residence or more restrictive use district. (731115-B.)

(4) A public stable or riding academy when located on a site of not less than ten acres.

(5) A drive-in theater located on a site of not less than ten acres and in compliance with sections 4-10 to 4-27. (3-19-59.)

(6) Motels when in compliance with chapter 33. (3-19-59.)

(7) An apartment dwelling group, in accordance with the provisions concerning apartment dwelling groups in section 45-19. (1-7-60.) (7-17-41; 3-19-59; 1-7-60; 661103-B.)

(8) Town houses, in accordance with the provisions concerning town houses in section 45-18 (g) (8). (731115-A.)

(9) Those uses permitted in an "O" office district by special permit under the same conditions as imposed in "O" office districts. (771006-L).

Sec. 45-22. "GR" GENERAL RETAIL DISTRICTS.

In a "GR" general retail district no building or land shall be used and no building shall be erected or structurally altered, unless otherwise provided in this chapter, except for one or more of the uses enumerated in this section. The "GR" general retail district is designed for retail businesses of general character, and wholesale establishments are not to be located in this district. Permitted uses are enumerated as follows:

- (1) Any use permitted in the "LR" local retail district.
- (2) Ambulance services.
- (3) Aquarium, bird, and pet shops.
- (4) An auto laundry, without boiler, heating, and steam cleaning facilities, in which all washing operations are carried on within a building.
- (5) An auto repair garage, where all work is conducted inside a building not including the open storage of vans, trailers, or trucks.
- (6) Auto seat covers and covering.
- (7) Cafes, cafeterias, and restaurants, with or without drive-in facilities, including the sale, dispensing and otherwise handling of alcoholic beverages, distilled spirits, liquors, wines, vinous liquors, ales, malt liquors, beer, and mixed beverages as those terms are defined in the Texas Liquor Control Act; Articles 666-667, Vernon's Texas Penal Code, direct to the consumer, for consumption on the premises, but not for resale; provided, that the sale of the above beverages is incidental and secondary to the sale of food and similar commodities for human consumption, and that such sale conforms to all the regulations of the state Liquor Control Act with reference to licenses and permits, time and manner of sale; and that the land or building is used at such location as a restaurant or cafe as defined in section 45-1; and that where food or refreshments are served on the premises, outside of the building and within fifty feet of a property line abutting an "O" office or more restricted district, a solid fence, dense hedge or other opaque barrier, not less than six feet high to within ten feet of a street line, is placed on the property lines where the property lines abut or adjoin such "O" office or more restricted district, or any land improved and used for residential purposes; and that where facilities are provided for any loudspeaker or other sound device to broadcast or play on the outside of the building any speech, songs, or instrumental music, the sound level at or beyond the property line shall not exceed fifty decibels. No food or drink may be served to vehicles parked on the public street. (11-3-66; 710610-A.)
- (8) Catering and wedding services.
- (9) Commercial billboards or advertising signs.
- (10) Craft and hobby shops, fix-it shops, bicycle repairs, saw filing, lawn mower sharpening; but without an outside garage.
- (11) Curtain cleaning shops.
- (12) Department stores; sporting goods, novelty, or toy shops.
- (13) Dyeing plants.
- (14) Electrical goods;
 - (a) Electronic wholesale distributors subject to the following limitations:

1. The distributor's place of business shall have no more than ten thousand square feet of floor area.

2. Sales by such distributor of household merchandise (as opposed to industrial merchandise) shall constitute at least eighty per cent of the business of such establishment. (6-11-64.)

- (15) Electrical repairing (domestic equipment and autos).
- (16) Exterminating companies.
- (17) Film developing and printing.
- (18) Furniture repairs and upholstering, with all storage and display within a building.

- (19) Frozen food lockers.
- (20) Hardware, paints, wall paper.
- (21) Household and office furniture, furnishings and appliances.
- (22) Repealed by Ordinance No. 740919-A.
- (23) Motels.
- (24) Motion picture theaters.
- (25) Office buildings.
- (26) Piano and musical instruments.
- (27) Commercial parking garages or any other automobile facility for parking of passenger cars and trucks of less than one-ton capacity only, where the rental of space is on an hourly, daily, weekly, or monthly basis.

(28) Plumbing shops without warehouse facilities (to include store for ordinary repairs but not storage of materials for contracting work).

(29) Rug cleaning shops, chemical type, where all cleaning operations are carried on within a building, where rugs are laid flat, the chemicals mixed with water and applied with a brush, and removed by vacuum cleaning, entirely without the generation of dust.

- (30) Seed stores.
- (31) Taxi dispatch offices.
- (32) Sale of new or used passenger cars and trucks of less than one-ton capacity. Vehicles shall be in operating condition and open display or storage areas shall be surfaced in accordance with the requirement for off-street parking spaces. Separate parts, motors, or other portions of vehicles shall be firsthand and sold at retail and shall be displayed or stored within an enclosed building. (3-19-59.)

(33) Sale of new or used boats. Boats shall be in operating condition and open display or storage areas shall be surfaced in accordance with requirements for off-street parking spaces. Separate parts, motors, or portions of boats shall be firsthand and sold at retail and shall be displayed or stored within an enclosed building. (3-19-59.)

(34) Accessory buildings and uses customarily incident to the uses enumerated in this section. No accessory use shall be construed to permit the keeping of articles or materials in the open or on the outside of the building.

(35) Signs as provided in section 45-31.

- (36) Any other retail use, subject to the following conditions:
 - (a) That it is conducted wholly within an enclosed building.
 - (b) That required yards shall not be used for display, sale, or storage of vehicles, equipment, containers, or waste material.

(c) That all merchandise is firsthand and sold at retail on the premises. (10-4-56.)

(d) That there is no manufacturing or processing; except, that which is incidental and essential to an enterprise in which all merchandise is sold at retail on the premises.

(e) That such use is not objectionable because of odor, excessive light, smoke, dust, noise, vibration, presence of vermin or rodents, or similar nuisances.

(37) Skating rinks or bowling alleys, when air conditioned and designed to reduce external noise to a minimum at the property line.

(38) Trampoline centers. (7-14-60.)

(39) Uses by special permit only, which shall include the following:

(a) Uses permitted in the "C" commercial district without a special permit, and when located adjoining or across a public street or alley from a "C" commercial or less restricted district.

(b) A veterinary hospital or clinic in accordance with the provisions of section 45-21 (v) (3). (731115-B.)

(c) A public stable or riding academy when located on a site of not less than five acres.

(d) Drive-in theaters when located on a site of not less than ten acres and in compliance with sections 4-10 to 4-27. (3-19-59.)

(e) Trailer courts when in compliance with chapter 33. (3-19-59.)

(f) An apartment dwelling group in accordance with the provisions concerning apartment dwelling groups in section 45-19. (1-7-60.) (7-17-41; 10-4-56; 3-19-59; 1-7-60; 6-11-64; 661103-B.)

(g) Town houses, in accordance with the provisions concerning town houses in section 45-18 (g) (8). (731115-A.)

(h) Those uses permitted in an "LR" local retail district by special permit under the same conditions as are imposed in "LR" local retail districts. (771006-L).

Sec. 45-22.1. "AV" Airport District

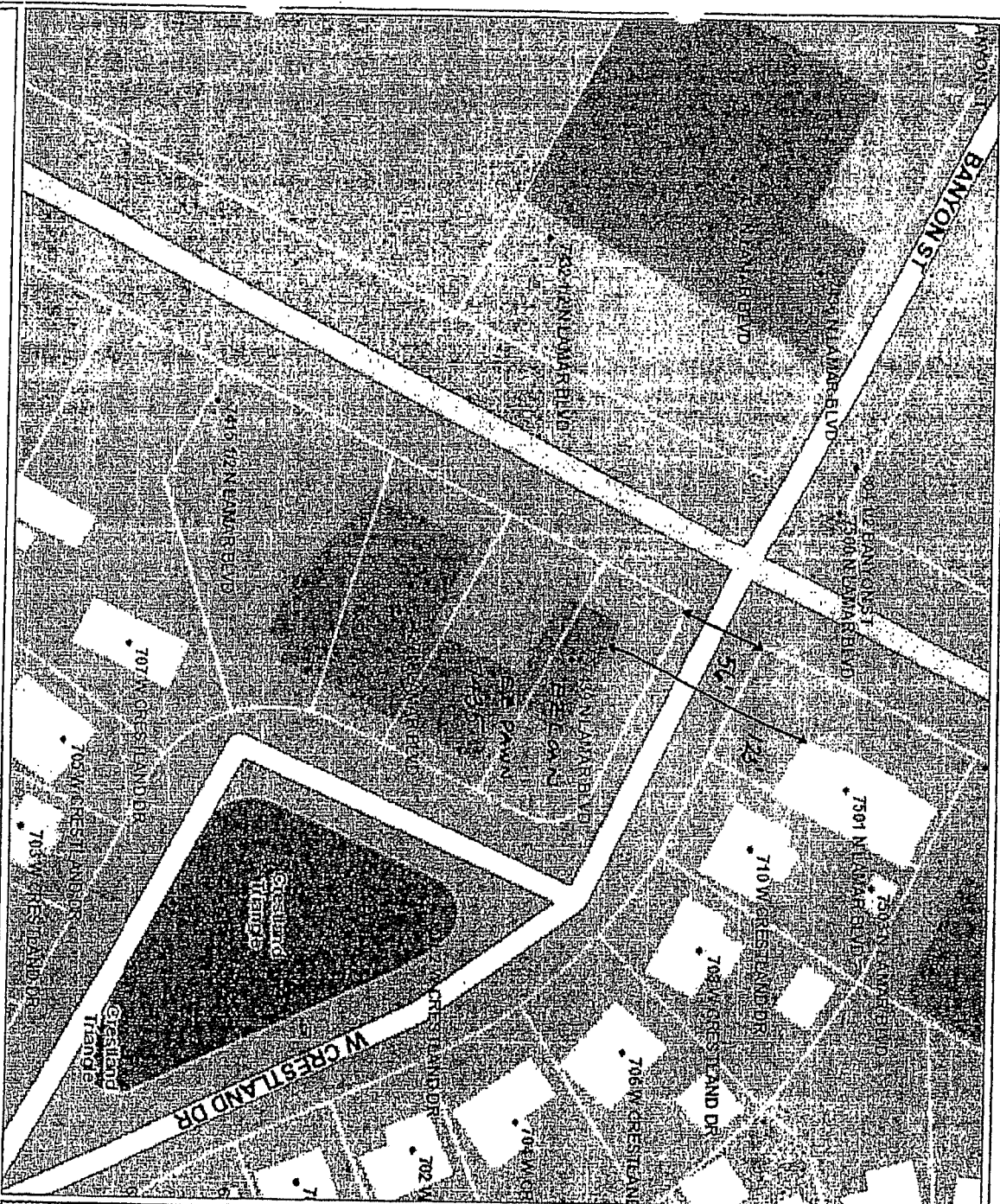
In an "AV" airport district, no building or land shall be used and no building shall be erected or structurally altered unless otherwise provided in this chapter, except for one or more of the following uses:

(1) Any use directly associated with the operation, service, fueling, repair, storage, charter, sales and rental of aircraft, and/or associated equipment.

(2) Assembly and sale of aircraft, air frames, aircraft engines, aircraft parts and associated components such as radios and navigational equipment.

(3) Airport customer service uses including, but not limited to, auto service stations, restaurants, bookstores, lounges, newsstands, dry cleaning, barbershops, secretarial services, drug stores, flower shops, gift shops, motels and hotels, and other uses and services of similar nature. (790419-I)

五



- Legend**
-  Lot Lines
 -  Streets
 -  Building Footprints
 -  Named Creeks
 -  Lakes and Rivers
 -  Parks
 -  County
 -  Address Points

THIS PRODUCT IS FOR INFORMATIONAL PURPOSES AND MAY NOT HAVE BEEN PREPARED FOR OR BE SUITABLE FOR LEGAL, ENGINEERING, OR SURVEYING PURPOSES. IT DOES NOT REPRESENT AN ON-THE-GROUND SURVEY AND REPRESENTS ONLY THE APPROXIMATE RELATIVE LOCATION OF PROPERTY BOUNDARIES. THIS PRODUCT HAS BEEN PRODUCED BY THE CITY OF AUSTIN FOR THE SOLE PURPOSE OF GEOGRAPHIC REFERENCE. NO WARRANTY IS MADE BY THE CITY OF AUSTIN REGARDING SPECIFIC ACCURACY OR COMPLETENESS.



Planning and Development Review Department
P.O. Box 1088, Austin, Texas 78767
One Texas Center, 505 Barton Springs Road
Telephone: (512) 974-6370 Fax: (512) 974-2423

Site Development Exemption Request

Site Address:	7439 N Lamar		DA-0010-03297
Project Name:	EZPAUN / EZ Money		
Legal Description:	Lot 1 BIKD Northway Crest Sec 2		
Zoning:	TOD-NP	Watershed:	Walter
Existing Land Use(s):	PAUN SALES		Flood Plain? ☐ Yes ☒ No
Proposed Land Use(s):	PAUN SALES / FINANCIAL SVCS		
Brief/General Description of the Development being sought:	Add FINANCIAL SVCS TO EXIST. E.C.		

Attach a detailed description of the proposed development in a memorandum or letter and a site plat or survey plan that graphically indicates, but is not limited to,:

- | | |
|--|--|
| ☒ existing trees | ☒ limits of construction |
| ☒ buildings | ☒ type of construction |
| ☒ parking areas | ☒ location of construction |
| ☒ roadways/streets | ☒ accessible parking |
| ☒ all areas of impervious cover levels (existing & proposed) | ☒ access route |
| ☒ erosion controls (i.e.: silt fencing, tree protection) | ☒ on-site sewage (septic) systems and drain fields |

I, Audrey Dison (PRINT NAME) do hereby certify that I am the

☐ owner ☒ owner's agent (to act as the owner's agent, written authorization from the owner must be provided) of this described property, and in this capacity, submit this request for exemption from the site plan substantial requirements pursuant to Chapter 25-5-2 of the Austin City Code.

Furthermore, I certify and acknowledge that:

1. Although the proposed development does not require a formal site plan approval, it may require, prior to beginning any site work, the approval of the subdivision or issuance of a building, remodel, and/or demolition permit;
2. Although the proposed development complies with all applicable zoning regulations, it does not prohibit enforcement of restrictive covenants and/or deed restrictions;
3. The approval of this exemption request does not constitute authorization to violate any provisions of the Austin City Code.

NOTE:

According to Rick Argola, there is no CO for a use at 7439 N. Lamar, and there apparently never has been other a building permit or CO issued for this address.

The CO for 7435 N. Lamar does not list Financial Services as a use either.

KPL

City of Austin, Texas



CREDIT ACCESS BUSINESS

REGISTRATION # A20130091116A

Issued to the following location:

TEXAS EZPAWN LP
7435 N LAMAR BLVD
AUSTIN, TX 78752

EXPIRATION DATE: 8/19/2014

This certificate must be renewed annually

*Issued in accordance with provisions of Chapter 4-12 of the Code of the City of Austin.
The Office of Telecommunications & Regulatory Affairs must be notified of all material change within 45 days of the change.*

Rondelle M. Hawkins

Rondelle Hawkins, Director

THIS CERTIFICATE MUST BE PROMINENTLY POSTED

Address: 7435 N. LAMAR Permit: 172455 Plat: 313
Lot: 2

Block D

Subdivision:

Outlot -

NORTHWAY CREST
SUBDIVISION

Fire Zone: 3

Use Dist. C-1

Occupancy:

RETAIL STORE

5-25-78	Layout	7-27-78	Framing	9-13-78	Final	Commercial
Foundation	8	Floor joist size & o.c.		Bldg. Conn.		Parking 18
Front setback	88	ceiling joist size & o.c.		Room Vent.		Exits
Total & Min. side yard	0	stud size & o.c.	2x4 16 16	Stairs		Exit lights
St. Yard REAR	25'			Rails		Fences
				Attic Vent.		Corridors
				Insulation		
Type Const.	III	W. Insulation		Hood Vent.		
Spec. Permit #		Sheetrock		Glass		
BOA		Commercial Sheetrock		Deadbolts		
		Occup. Sep.	1 1/2 - 5	Fireplaces		
		Thru out		DNE ROOM		

Owner: PETER W. JASIN

Contractor: SUPERIOR

CONSTRUCTORS

NO EXIT ON EAST 10' ON CROSSLAND.

52x60 - 3360 #

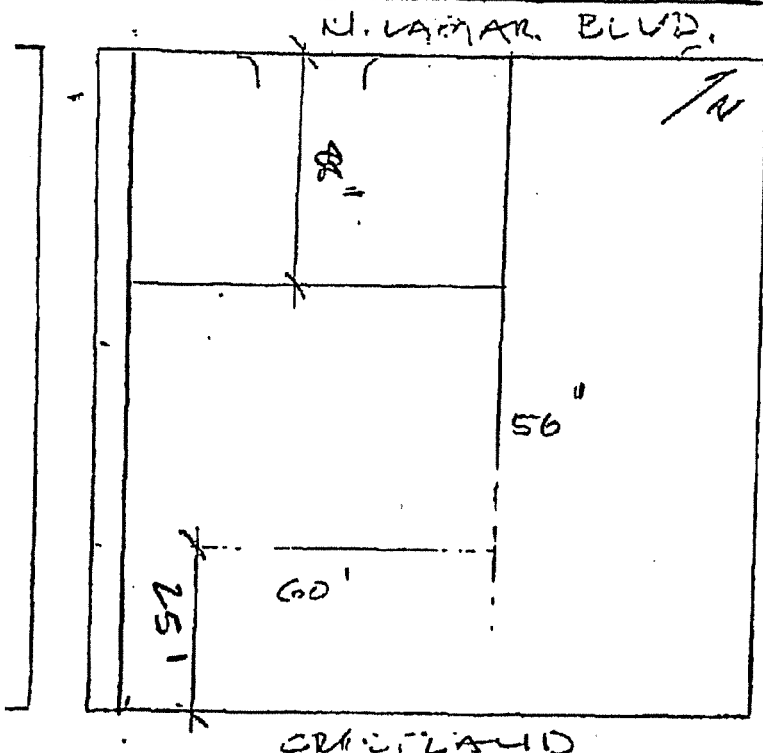
BID 2005 JUNE 77



City of Austin

Clerk PST Date 9/24/78

Address: N. LAMAR BLVD.



Inspector:

OWNER	Peter W. Jasin	ADDRESS	7435 North Lamar Blvd.
PLAT	313	LOT	2
		R/L	D
SUBDIVISION	North Way Grant		
OCCUPANCY	Retail Store		
BLDG. PERMIT #	172435	DATE	4-25-78
		OWNERS ESTIMATE	48,000
CONTRACTOR	Superior Con Structures		NO. OF FIXTURES
			s/p
WATER TAP REC#	B 98671	SEWER TAP REC#	84406
One story steel fram comm bldg.			

BID 2004



City of Austin

CERTIFICATE OF OCCUPANCY

BUILDING PERMIT NO. 1984-016096 BP

ISSUE DATE: 01/08/1985

BUILDING ADDRESS: 7435 Lamar Boulevard North A 00000

LEGAL DESCRIPTION: Northway Crest Wallace Str Block; Lot: L11 B1 D 2 & 10x50ft Jp Northway Crest Wallace Str L11 B1 D 2 & 10x50ft Jp

PROPOSED OCCUPANCY:

C-1000 Commercial Remodel

Remodel - Repair Comm Bldg To Min Side 120 Days

BUILDING GROUP / DIVISION: B-2

REMODEL BUILDING SQUARE FOOTAGE: 0

SPRINKLER SYSTEM:

CODE YEAR:

CODE TYPE:

FIXED OCCUPANCY: 0

NON FIXED OCCUPANCY:

CONTRACTOR:

***** **CERTIFICATE OF OCCUPANCY** *****

THIS IS TO CERTIFY THAT THE BUILDING OR STRUCTURE AT THE ADDRESS LISTED ABOVE HAS BEEN INSPECTED FOR COMPLIANCE WITH THE REQUIREMENTS OF THE AUSTIN CITY CODE FOR THE GROUP AND DIVISION OF OCCUPANCY LISTED ABOVE.

NEITHER THE ISSUANCE OF THIS CERTIFICATE NOR THE INSPECTIONS MADE SHALL LIMIT THE RESPONSIBILITY OR LIABILITY OF ANY PERSON, FIRM OR CORPORATION.

OWNING, OPERATING, CONTROLLING OR INSTALLING ANY APPLIANCE OR MATERIAL UPON THE PREMISE, OR DOING ANY WORK WHATSOEVER ON SUCH PREMISE.

THE CITY OF AUSTIN DOES NOT ASSUME ANY RESPONSIBILITY OR LIABILITY BY REASON OF THE INSPECTION OR REINSPECTION OF THE PREMISE, OR THE ISSUANCE OF THE "CERTIFICATE OF OCCUPANCY", OR BY ANY REASON OF ANY APPROVAL OR DISAPPROVAL.

BUILDING CODE REVIEWER:


For Leon Barba, Building Official

Excerpt from the February 28, 2012 Planning Commission hearing regarding the Alternative Financial Services Code Amendment C2O-2011-037:

Jeff Jack: "The existing offices, these businesses, are they then forced to move?"

Robert Heil: "No, they would not be forced to move."

Jeff Jack: "So they're going to be grandfathered in as non-conforming uses?"

Robert Heil: "Or they could be legal non-conforming uses, depending on....but they would not be forced to move."

permit from the payment of other fees that are prescribed by law.

108.6 Refunds. The building official is authorized to establish a refund policy.

SECTION 109 INSPECTIONS

109.1 General. Construction or work for which a permit is required shall be subject to inspection by the building official and such construction or work shall remain accessible and exposed for inspection purposes until approved. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Inspections presuming to give authority to violate or cancel the provisions of this code or of other ordinances of the jurisdiction shall not be valid. It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the building official nor the jurisdiction shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.

109.2 Preliminary inspection. Before issuing a permit, the building official is authorized to examine or cause to be examined buildings, structures and sites for which an application has been filed.

109.3 Required inspections. The building official, upon notification, shall make the inspections set forth in Sections 109.3.1 through 109.3.10.

109.3.1 Footing and foundation inspection. Footing and foundation inspections shall be made after excavations for footings are complete and any required reinforcing steel is in place. For concrete foundations, any required forms shall be in place prior to inspection. Materials for the foundation shall be on the job, except where concrete is ready mixed in accordance with ASTM C 94, the concrete need not be on the job.

109.3.2 Concrete slab and under-floor inspection. Concrete slab and under-floor inspections shall be made after in-slab or under-floor reinforcing steel and building service equipment, conduit, piping accessories and other ancillary equipment items are in place, but before any concrete is placed or floor sheathing installed, including the subfloor.

109.3.3 Lowest floor elevation. In flood hazard areas, upon placement of the lowest floor, including the basement, and prior to further vertical construction, the elevation certification required in Section 1612.5 shall be submitted to the building official.

109.3.4 Frame inspection. Framing inspections shall be made after the roof deck or sheathing, all framing, fireblocking and bracing are in place and pipes, chimneys and vents to be concealed are complete and the rough electrical, plumbing, heating wires, pipes and ducts are approved.

109.3.5 Lath and gypsum board inspection. Lath and gypsum board inspections shall be made after lathing and gypsum board, interior and exterior, is in place, but before

any plastering is applied or gypsum board joints and fasteners are taped and finished.

Exception: Gypsum board that is not part of a fire-resistance-rated assembly or a shear assembly.

109.3.6 Fire-resistant penetrations. Protection of joints and penetrations in fire-resistance-rated assemblies shall not be concealed from view until inspected and approved.

109.3.7 Energy efficiency inspections. Inspections shall be made to determine compliance with Chapter 13 and shall include, but not be limited to, inspections for: envelope insulation *R* and *U* values, fenestration *U* value, duct system *R* value, and HVAC and water-heating equipment efficiency.

109.3.8 Other inspections. In addition to the inspections specified above, the building official is authorized to make or require other inspections of any construction work to ascertain compliance with the provisions of this code and other laws that are enforced by the department of building safety.

109.3.9 Special inspections. For special inspections, see Section 1704.

109.3.10 Final inspection. The final inspection shall be made after all work required by the building permit is completed.

109.4 Inspection agencies. The building official is authorized to accept reports of approved inspection agencies, provided such agencies satisfy the requirements as to qualifications and reliability.

109.5 Inspection requests. It shall be the duty of the holder of the building permit or their duly authorized agent to notify the building official when work is ready for inspection. It shall be the duty of the permit holder to provide access to and means for inspections of such work that are required by this code.

109.6 Approval required. Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the building official. The building official, upon notification, shall make the requested inspections and shall either indicate the portion of the construction that is satisfactory as completed, or notify the permit holder or his or her agent wherein the same fails to comply with this code. Any portions that do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the building official.

SECTION 110 CERTIFICATE OF OCCUPANCY

110.1 Use and occupancy. No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction.

110.2 Certificate issued. After the building official inspects the building or structure and finds no violations of the provi-

ADMINISTRATION

sions of this code or other laws that are enforced by the department of building safety, the building official shall issue a certificate of occupancy that contains the following:

1. The building permit number.
2. The address of the structure.
3. The name and address of the owner.
4. A description of that portion of the structure for which the certificate is issued.
5. A statement that the described portion of the structure has been inspected for compliance with the requirements of this code for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.
6. The name of the building official.
7. The edition of the code under which the permit was issued.
8. The use and occupancy, in accordance with the provisions of Chapter 3.
9. The type of construction as defined in Chapter 6.
10. The design occupant load.
11. If an automatic sprinkler system is provided, whether the sprinkler system is required.
12. Any special stipulations and conditions of the building permit.

110.3 Temporary occupancy. The building official is authorized to issue a temporary certificate of occupancy before the completion of the entire work covered by the permit, provided that such portion or portions shall be occupied safely. The building official shall set a time period during which the temporary certificate of occupancy is valid.

110.4 Revocation. The building official is authorized to, in writing, suspend or revoke a certificate of occupancy or completion issued under the provisions of this code wherever the certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this code.

SECTION 111 SERVICE UTILITIES

111.1 Connection of service utilities. No person shall make connections from a utility, source of energy, fuel or power to any building or system that is regulated by this code for which a permit is required, until released by the building official.

111.2 Temporary connection. The building official shall have the authority to authorize the temporary connection of the building or system to the utility source of energy, fuel or power.

111.3 Authority to disconnect service utilities. The building official shall have the authority to authorize disconnection of utility service to the building, structure or system regulated by this code and the codes referenced in case of emergency where necessary to eliminate an immediate hazard to life or property. The building official shall notify the serving utility, and whenever possible the owner and occupant of the building, structure

or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnecting, the owner or occupant of the building, structure or service system shall be notified in writing, as soon as practical thereafter.

SECTION 112 BOARD OF APPEALS

112.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business.

112.2 Limitations on authority. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of this code.

112.3 Qualifications. The board of appeals shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction and are not employees of the jurisdiction.

SECTION 113 VIOLATIONS

113.1 Unlawful acts. It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by this code, or cause same to be done, in conflict with or in violation of any of the provisions of this code.

113.2 Notice of violation. The building official is authorized to serve a notice of violation or order on the person responsible for the erection, construction, alteration, extension, repair, moving, removal, demolition or occupancy of a building or structure in violation of the provisions of this code, or in violation of a permit or certificate issued under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

113.3 Prosecution of violation. If the notice of violation is not complied with promptly, the building official is authorized to request the legal counsel of the jurisdiction to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this code or of the order or direction made pursuant thereto.

113.4 Violation penalties. Any person who violates a provision of this code or fails to comply with any of the requirements thereof or who erects, constructs, alters or repairs a building or structure in violation of the approved construction documents or directive of the building official, or of a permit or certificate issued under the provisions of this code, shall be subject to penalties as prescribed by law.

CHAPTER 3

USE AND OCCUPANCY CLASSIFICATION

SECTION 301 GENERAL

301.1 Scope. The provisions of this chapter shall control the classification of all buildings and structures as to use and occupancy.

SECTION 302 CLASSIFICATION

302.1 General. Structures or portions of structures shall be classified with respect to occupancy in one or more of the groups listed below. Structures with multiple uses shall be classified according to Section 302.3. Where a structure is proposed for a purpose which is not specifically provided for in this code, such structure shall be classified in the group which the occupancy most nearly resembles, according to the fire safety and relative hazard involved.

1. Assembly (see Section 303): Groups A-1, A-2, A-3, A-4 and A-5
2. Business (see Section 304): Group B
3. Educational (see Section 305): Group E
4. Factory and Industrial (see Section 306): Groups F-1 and F-2
5. High Hazard (see Section 307): Groups H-1, H-2, H-3, H-4 and H-5
6. Institutional (see Section 308): Groups I-1, I-2, I-3 and I-4
7. Mercantile (see Section 309): Group M
8. Residential (see Section 310): Groups R-1, R-2, R-3 as applicable in Section 101.2, and R-4
9. Storage (see Section 311): Groups S-1 and S-2
10. Utility and Miscellaneous (see Section 312): Group U

302.1.1 Incidental use areas. Spaces which are incidental to the main occupancy shall be separated or protected, or both, in accordance with Table 302.1.1 or the building shall be classified as a mixed occupancy and comply with Section 302.3. Areas that are incidental to the main occupancy shall be classified in accordance with the main occupancy of the portion of the building in which the incidental use area is located.

Exception: Incidental use areas within and serving a dwelling unit are not required to comply with this section.

302.1.1.1 Separation. Where Table 302.1.1 requires a fire-resistance-rated separation, the incidental use area shall be separated from the remainder of the building with a fire barrier. Where Table 302.1.1 permits an automatic fire-extinguishing system without a fire barrier, the incidental use area shall be separated by construction capable of resisting the passage of smoke. The partitions

shall extend from the floor to the underside of the fire-resistance-rated floor/ceiling assembly or fire-resistance-rated roof/ceiling assembly or to the underside of the floor or roof deck above. Doors shall be self-closing or automatic-closing upon detection of smoke. Doors shall not have air transfer openings and shall not be undercut in excess of the clearance permitted in accordance with NFPA 80.

**TABLE 302.1.1
INCIDENTAL USE AREAS**

ROOM OR AREA	SEPARATION ^a
Furnace room where any piece of equipment is over 400,000 Btu per hour input	1 hour or provide automatic fire-extinguishing system
Rooms with any boiler over 15 psi and 10 horsepower	1 hour or provide automatic fire-extinguishing system
Refrigerant machinery rooms	1 hour or provide automatic sprinkler system
Parking garage (Section 406.2)	2 hours; or 1 hour and provide automatic fire-extinguishing system
Hydrogen cut-off rooms	1-hour fire barriers and floor/ceiling assemblies in Group B, F, H, M, S and U occupancies. 2-hour fire barriers and floor/ceiling assemblies in Group A, E, I and R occupancies.
Incinerator rooms	2 hours and automatic sprinkler system
Paint shops, not classified as Group H, located in occupancies other than Group F	2 hours; or 1 hour and provide automatic fire-extinguishing system
Laboratories and vocational shops, not classified as Group H, located in Group E or I-2 occupancies	1 hour or provide automatic fire-extinguishing system
Laundry rooms over 100 square feet	1 hour or provide automatic fire-extinguishing system
Storage rooms over 100 square feet	1 hour or provide automatic fire-extinguishing system
Group I-3 cells equipped with padded surfaces	1 hour
Group I-2 waste and linen collection rooms	1 hour
Waste and linen collection rooms over 100 square feet	1 hour or provide automatic fire-extinguishing system
Stationary lead-acid battery systems having a liquid capacity of more than 100 gallons used for facility standby power, emergency power or uninterrupted power supplies	1-hour fire barriers and floor/ceiling assemblies in Group B, F, H, M, S and U occupancies. 2-hour fire barriers and floor/ceiling assemblies in Group A, E, I and R occupancies

For SI: 1 square foot = 0.0929 m², 1 pound per square inch = 6.9 kPa, 1 British thermal unit per hour = 0.293 watts, 1 horsepower = 746 watts, 1 gallon = 3.785 L.

a. Where an automatic fire-extinguishing system is provided, it need only be provided in the incidental use room or area.