

Rogatinsky & Matthews
ATTORNEYS AT LAW

February 24, 2021

Mr. Clarence Sirmons
Director of Development Services
Ms. Mary Savage Dunham
Assistant Director of Development Services
City of Riviera Beach
600 West Blue Heron Blvd
Riviera Beach, Florida 33404

Dear Mr. Sirmons and Ms. Savage Dunham:

Thank you for requesting that I provide a narrative to the City of Riviera Beach to describe the Detoxification use that has been previously approved on October 18, 2019 by the former Director of Community Development Services, Jeff Gagnon. (attached to this narrative) As you know I have been diligently working on this project for almost three years facing many unnecessary obstacles along the way. On at least two occasions prior to the new council and administration, the former city building and planning departments lost all of the original documentation that was submitted by my architect Nader Goubran.

As you know, real property zoned as Downtown Core within the City of Riviera Beach allows for many uses including but not limited to Hospitals, Nursing and Convalescent homes, Adult Living Facilities (ALF), Hotels, Daycares and a host of others. I bring your attention to the zoning verification letter issued by your long-time employee, Jeff Gagnon, who oversaw the department prior to his recent departure. Mr. Gagnon and I met in person on a number of occasions over the last three years and we worked out all issues prior to me completing my purchase of the property on 55 and 47 West 14th Street. **As discussed in detail on February 19, 2021, Mr. Gagnon instructed me to do a unity of title on the property. He said that if the zoning was different on each parcel, he would ask for a replat but since both properties are zoned Downtown Core a Unity of Title would be required. We agree to unite the title by the time permits are issued for the project.**

Mr. Gagnon agreed to permit our use and reduction in parking because the code allowed for the use to be built on the property. The code in Section 31-539 (b)(3) specifically permits the Director of

Community Services to administratively waive the minimum number of parking spaces if criteria such as market demand, parking availability, or unique circumstances of the project within the area justify a reduction. **During our scheduled zoom call on Friday, February 19, 2021 we accepted the recommendation of Mr. Josue Leger to remove the last parking space on the South side of the property to give the last parking space additional room to back up and improve turning movements on site.** Further, the code states in the same section, 31-539 (b)(1) that, **Within the Downtown Core and Downtown General districts, lots 100 feet in width or less are not required to provide off-street parking.** In this circumstance the Director of Community Services does not need to waive the minimum parking requirements because the real property is 100 feet or less even after the unity of title is complete. This was discussed with at length with Mr. Gagnon and he agreed to this conclusion based on the specific language in the Riviera Beach municipal code.

Although the code is silent on the specific Detoxification use, Mr. Gagnon was very familiar with the operational characteristics of a hospital, ALF, Nursing home and a medical detox facility. Due to my experience as an attorney working with a number of Florida municipalities on zoning of detox and mental health facilities, I am qualified to provide you with information comparing and contrasting the operational characteristics of an Assisted Living Facility ("ALF"), Nursing Homes and a Residential Detoxification Program ("Detox").

As a general premise, and as set forth in more detail more, an ALF uses are governed by Part II of Chapter 408, Florida Statutes as well as by Part I, Chapter 429, Florida Statutes and further regulated by the Florida Department of Health, Agency for Health Care Administration ("AHCA") pursuant to Chapters 58A-5, 58T-1 and 59A-35 of the Florida Administrative Code. Separately, Detox programs are governed by a single statute and set of regulations — Chapter 397, Florida Statutes, and regulated by the Florida Department of Children and Families ("DCF") pursuant to Chapter 65D-30 of the Florida Administrative Code.

As defined by s. 429.02(5), Florida Statutes, an "Assisted living facility" means any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator. "Personal services" means the "direct physical assistance with or supervision of the activities of daily living and the self-administration of medication and other similar services which the department may define by rule." See, s.429.05(17), Fla. Stat. Under this same definition, "Personal services" does not include medical, nursing,

dental, or mental health services. **As a general rule, most residents of an ALF or Nursing home will be residents for a long period of time exceeding a year or longer.**

Separately, the concept of "Detoxification" as defined by s. 397.311, Fla. Stat., pertains to subacute (as opposed to "acute" or "chronic") care that is provided on an inpatient or an outpatient basis to assist individuals to withdraw from the physiological and psychological effects of substance misuse and who otherwise meet the placement criteria. See, s. 397.311(22)(a)4, Fla. Stat. For purposes of this letter, an ALF, Nursing Home, or Hospital use would operate at the same or greater intensity than a licensed Residential Detox Treatment facility both from an operational standpoint as well as from length of stay by the residents. **In all respects, an ALF and Nursing Home use is operationally more intense than an inpatient Detox program with subsequent Residential Level 1 treatment which is significantly less operationally intense as well as experiences far fewer nights of residency by the clients (7 to 45 days on average).**

Within a Detox and Residential Level 1 program, while there is "medical" oversight from a physician on-call, there are no actual medical services provided onsite, but for the dispensing of prescribed medications from an on-site pharmacy on an as-needed basis to assist the client through their individualized program. There are otherwise no invasive procedures or other medical-type care. Conversely, within an ALF, while there are no specific medical services provided, there is the occasion where direct medical care may be required' and "limited nursing services" are routinely provided.² More intensive, 24-hour nursing services of a medical nature may be provided at an ALF and Nursing Home as well, under doctor's order.

ALF and Nursing Home uses are specifically regulated by rule pertaining to architectural and operational requirements to meet the needs of a much more physically-dependent population. Detox programs have no such requirements or needs. Both uses are similar, however, in the requirement put forth by rule as to staffing requirements, regular state inspections, and general oversight. Both uses have specific life safety code requirements when it comes to fire suppression systems. Both uses have the same operational characteristics when it comes to deliveries of goods and services.

Due to the age of the typical resident in an ALF and Nursing Home, the likelihood of calls for emergency (911) services are far greater for ALF uses than in a typical Detox program. As a result, the overall disturbance to the surrounding neighborhood from such calls as a result of ambulance activity is considerably far greater and more routine at a typical ALF than at a Detox program.

Also, differently, ALF and Nursing Home facilities tend to have far more daily visitations than any Detox program, thereby generating more traffic as well as off-street parking requirements. A typical ALF

or Nursing Facility receives constant visitors from family and friends on a regular bases. This requires more parking to accommodate the patient visitors. A typical Detox Facility does not lend itself to visitation as the stays are relatively short and the clients' days are fully scheduled. Friends are not permitted to visit at the detox facility and outside contact is limited.

Off-Street parking for more than 11 cars is not needed because the staffing requirement for Detox programs is as follows: For Twenty -Five (25) Patients - two Nurses and three Support Staff techs are required 24/7. The required medical personnel consist of an on-call physician, who may work through a nurse practitioner or physician's assistant. For both ALF, Nursing Home and Detox uses, the administrative staffing onsite is generally the same, dependent upon the needs and desires of the operator. Eleven (11) off-street parking spaces are more than sufficient to provide employee and delivery parking spots for the building. It is safe to assume that there will be a maximum of 7 employees during every shift during the 24-hour day. In order to accommodate deliveries such as catering, the code specifically says that On-Street parking located directly in front of the property line may be used. Notwithstanding, there will be an additional 5 parking spaces in the provided Off-Street parking at all times to accommodate such delivery vehicles. Please keep in mind that patients don't drive to detox. They are picked up at the airport or another facility and brought the detox and they do not leave until they complete the detox process.

In conclusion, it is my educated and professional opinion that an ALF/Nursing Home/Hospital use at any property in the Downtown Core is operationally more intense than a Detox Residential Level 1 program with the same bed count. The staffing for ALF and Nursing Homes is typically higher and the needs of the residents are greater. The traffic generated by an ALF also tends to be greater as do off-street parking demands. Detox on the other hand only requires 7 employees for up to 25 beds. **The current facility will be a 25 - bed facility so eleven (11) parking spaces is sufficient to accommodate the three- shift staff.**

Internal to the structure, both uses tend to be operationally equivalent, though the residents of an ALF, Nursing Home, and Hospital tend to be more physically and emotionally dependent upon the staff, depending upon their age and health. Clients of a Detoxification program are overwhelmingly physically healthy and are simply seeking a facility to guide them through the process of removing the toxins placed into their bodies from substances. This is accomplished in a pleasant, non-medical atmosphere most similar to a hotel-like environment.



Samuel Rogatinsky, Esq.



CITY OF RIVIERA BEACH

DEVELOPMENT SERVICES DEPARTMENT | 600 WEST BLUE HERON BLVD.
RIVIERA BEACH FL, 33404 | MAIN: (561) 845-4060 | FAX: (561) 845-4038

PLANNING AND ZONING DIVISION

October 18, 2019

Sent by Email Only: samr@rogatinskylaw.com
(954) 404-6140

Rogatinsky & Matthews, Attorneys at Law
ATTN: Samuel Rogatinsky, Esq.
3113 Stirling Road, Suite 103
Fort Lauderdale, FL 33312

Re: Zoning Verification Letter Request (ZVL-19-30), 55 W. 14th Street and 47 W. 14th Street, PCN: 56-43-42-33-06-003-0130 and 56-43-42-33-06-003-0110

Dear Mr. Rogatinsky,

Please find responses below to your Zoning Verification request letter (enclosed) associated with 55 W. 14th Street and 47 W. 14th Street, hereinafter referred to as the Properties.

1. The Properties have a Downtown Mixed Use (DMU) Future Land Use Designation and a Downtown Core (DC) Zoning Designation.
2. City Code Sec. 31-536(a)(3)(a)(4) provides that "Hospitals" are a permitted use within the DC Zoning District.
3. City Code Sec. 31-536(a)(3)(a)(8) provides that "Nursing or convalescent homes and adult living facilities (ALF)" are permitted uses within the DC Zoning District.
4. The City's DC Zoning Code (Sec. 31-536(a) et seq.) is silent on "Detoxification" and "Drug or Alcohol Residential Treatment" uses.
5. The City's DC Zoning Code (Sec. 31-536(a) et seq.) is silent on "Mental Health Residential Treatment Use" as defined by Chapter 65E-4.016, Florida Administrative Code.
6. The operational characteristics of a Hospital, Nursing Home or Convalescent Home are comparable to that of a Detoxification use pursuant to Chapter 397.311, Florida Statutes, a Residential Treatment use as defined within Chapter 65D-30.007, Florida Administrative Code, and a Mental Health Residential Treatment use as defined by Chapter 65E-4.016, Florida Administrative Code.
7. The City processes and grants requests for reasonable accommodation on a case-by-case basis in accordance with FHA and ADA requirements.
8. The request for reasonable accommodation does not impose an undue burden or expense upon the City or create a fundamental alteration of the DC Zoning District.

Per your request, the City would consider the following uses as permitted uses, since they are operationally similar to a Hospital, Nursing Home, Convalescent Home, or Adult Living Facility; (A) Detoxification use, pursuant to Chapter 397.311, Florida Statutes, and Chapter 65D-30, Florida Administrative Code for persons in treatment for Substance Use Disorder; (B) Residential Treatment use as defined within Chapter 65D-30.007, Florida Administrative Code; and (C) Mental Health Residential Treatment use as defined by 65E-4.016, Florida Administrative Code.

Please feel free to contact me at (561) 845-4060 or jgagnon@rivierabeach.org for additional information.

Sincerely,

Jeff Gagnon, AICP
Acting Director of Development Services

Rogatinsky

Matthews

September 24, 2019

Via E-Mail and FEDEX

Jeff Gagnon, AICP
Acting Director of Development Services
City of Riviera Beach
600 W. Blue Heron Blvd.
Riviera Beach, Florida 33404

RE: Request for Zoning Verification for adjacent Downtown Core properties 55 W 14th ST; and 47 W 14th ST. PCN 56-43-42-33-06-003-0130 and 56-43-42-33-06-003-0110

Dear Director Gagnon,

I am writing on behalf of our client, HMDM, LLC who has purchased two adjacent lots at 55 West 14th Street and 47 West 14th Street in Riviera Beach. The client has hired an architect and engineer to create a site plan and building plans and we are requesting formal written zoning verification from the City to confirm that the Property may be used for its intended purposes.

1. Please confirm that the zoning of these two lots is DC ("Downtown Core").
2. Please confirm that a Hospital is a "Permitted Use" in a Downtown Core property as specifically designated in City Code Sec. 31-536(a)
3. Please confirm that Nursing or Convalescent Homes and adult living facilities or (ALF) are all "Permitted Uses" at a Downtown Core property.
4. Please confirm that the Downtown Core zoning designation is currently silent on "Detoxification" and "Drug or Alcohol Residential Treatment" uses.
5. Please confirm that the Downtown Core zoning designation is currently silent on a Mental Health Residential Treatment use as defined by Chapter 65E-4.016, Florida Administrative Code.
6. Please confirm that the operational characteristics of a Hospital and a Nursing Home or Convalescent Home would typically be compared to that of a Detoxification use pursuant Chapter 397.311, a Residential Treatment Use as defined within Chapter 65D-30.007, Florida Administrative Code and a Mental Health Residential Treatment as defined by Chapter 65E-4.016, Florida Administrative Code.
7. Please confirm that the request for reasonable accommodation seeks relief from what might otherwise be considered a discriminatory interpretation and application by the City of its Code of Ordinances and Land Development Regulations.
8. Please confirm that the request for reasonable accommodation does not impose an undue burden or expense upon the City or create a fundamental alteration in the DC zoning designation.

3113 Stirling Road, Suite 103 | Fort Lauderdale, FL 33312

Tel: 954.404.6140 | Fax: 954.925.1640

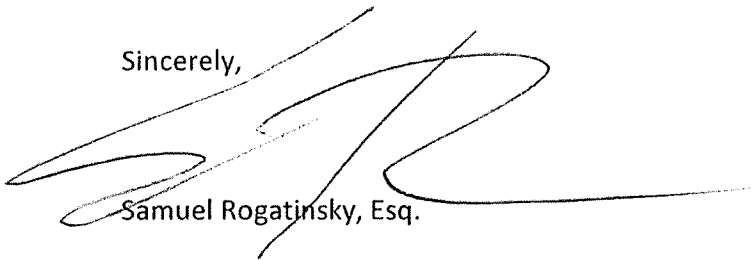
www.rogatinskylaw.com

On behalf of our client, HMDM, LLC, we request that the City provide zoning verification approval for (A) a use providing services defined as "Detoxification" pursuant to Chapter 397.311 Florida Statutes, and Chapter 65D-30, Florida Administrative Code for persons in treatment for Substance Use Disorder (commonly referred to as a "drug or alcohol treatment center"), (B) Residential Treatment as defined within Chapter 65D-30.007 and (C) Mental Health Residential Treatment as defined by 65E-4.016, Florida Administrative Code.

Our client is aware that a City Certificate of Use and Business Tax Receipt is required prior to commencing any business operations. Further, maximum occupancy will depend upon the Florida Life Safety Code and the Florida Building Code.

Should you have any questions, please contact me at samr@rogatinskylaw.com or on my cell at 954.995.3805.

Sincerely,



Samuel Rogatinsky, Esq.

cc: Al Jacquet, Esq.