Development and Infrastructure Services Department

November 24, 2014

Keri Silvyn, Esq.
Lazarus, Silvyn and Bangs, P.C.
4733 E. Camp Lowell Drive
Tucson, AZ 85712-1256
Sent via email: ksilvyn@lsblandlaw.com

RE: Cathey's Sew and Vac
Located at 8700 N. Oracle Road
Zoning Interpretation (OV714-012)

Dear Miss Silvyn,

Thank you for submitting a Zoning Interpretation for the Cathey's Sew and Vac business, located at 8700 N. Oracle Road. The purpose of the interpretation is to provide guidance relative to the expansion of the existing business.

The property contains an existing retail building and parking lot, which were established in 1973 under Pima County jurisdiction. The northern portion of the property is zoned commercial (C-1) and the southern portion is zoned residential (R-6). Despite the residential zoning designation, the southern portion has always maintained a commercial use because of the existing retail building and parking lot. The commercial development (i.e. retail building and parking lot) on the southern portion of the property is considered to be a legal non-conforming use because it was legally established prior to the residential zoning designation.

The submitted application proposes several alterations to the residentially zoned portion of the property. The proposed alterations include:

- Increasing the size of retail building from 4 sq. ft. to 475 sq. ft. into residential zoned property (R-6)
- Installing a landscape buffer yard
- Removing and relocating the existing parking lot

Based on the submitted information, the following interpretation is hereby rendered for the proposed commercial expansion into the residentially zoned portion of the property.

The proposed retail expansion is not permitted for the following reasons:

1. As specified in Section 29.4 (Alterations of a Legal Non-Conforming Use) of the Oro Valley Zoning Code, the proposed retail use must be permitted within the property's R-6 zoning designation. The R-6 zoning does not allow retail uses.

2. The proposed retail expansion does not comply with the case law, Arizona Foundation for Neurology and Psychiatry v. Sienerth, which hold that the expansion of a legal non-conforming use shall not be considered an alteration.

Although the proposed retail expansion is not permitted, the property owner may choose to develop a professional office within the R-6 zoning designation. This proposed use is permitted within the residential zoning district.

If you have any questions, please contact Rosevelt Arellano, Planner, at rarellano@orovalleyaz.gov or (520) 229-4817.

Sincerely,

Bayer Vella
Planning and Zoning Administrator

Cc: Rory Juneman, Lazarus, Silvyn and Bangs, P.C.
Donny Cathey, Cathey's Sew and Vac