

ORDINANCE NO. 01-13

AN ORDINANCE OF THE TOWN OF MIAMI LAKES, FLORIDA, PROVIDING FOR REPEAL OF SECTION 33-36.1 OF THE TOWN CODE, TITLED "ADMINISTRATIVE VARIANCES," PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, upon incorporation of the Town, jurisdiction to decide land development matters wherein the Town's boundaries falls within the duties of the Town Council; and

WHEREAS, the Town Council adopted Ordinance 2001-01 wherein the Town Council assumed regulatory jurisdiction for all planning and zoning matters within the Town; and

WHEREAS, Chapter 33 of the Code of Miami-Dade County, Florida, currently serves as the Town's Land Development Code pursuant to Article VIII, Section 8.3 of the Town Charter (the "Town Code"); and

WHEREAS, Section 33-36.1 of the Code provides a procedure for the consideration of certain non-use variances as "Administrative Variances;" and

WHEREAS, Administrative Variances do not require a public hearing before the Town Council; and

WHEREAS, the Town Council desires to consider all non-use variances at duly noticed public hearings; and

WHEREAS, the Town Council desires to establish a uniform procedure for the consideration of non-use variances; and

WHEREAS, elimination of the current procedures for the consideration of Administrative Variances will accomplish this goal.

(Coding: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.)

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF
TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated by reference.

Section 2. Repeal of Administrative Variance Procedure. Section 33-36.1¹ of the Town Code, titled "Administrative Variances," is repealed in its entirety as follows:

Sec. 33-36.1. Administrative Variances.

~~(a) — Notwithstanding any other provision of this chapter, in RU-1, RU 2, RU TH, all EU Districts, and those other districts permitting single family, duplex, and townhouse use, upon application duly made, the Director may, by administrative decision, approve any "non use variance" request. For the purposes of this subsection, a "non use variance", as defined in Section 33-311.1, Code of Miami Dade County, may involve matters such as setback lines, frontage requirements, subdivision regulations, height limitations, lot size restrictions, yard requirements, and other variances which have no relation to change of use of the property in question. Requests varying setbacks, and lot coverage requirements from those specified elsewhere in the zoning regulations may only be approved providing that they do not exceed the following:~~

~~(1) — That the setback required is not reduced below fifty (50) of that normally required.~~

~~(2) — That the lot coverage is not increased by more than twenty (20) of that normally permitted.~~

~~(b) — Notwithstanding any other provision of this chapter, in any district upon application duly made, the Director may, by administrative decision, approve any "non use variance"~~

^{1/} The Code of Miami-Dade County as it existed on December 5, 2000, is made applicable to the Town by Article VIII, Section 8.3 of the Town Charter.

~~request or "special exception" from zoning regulations on parking requirements for any property designated as an historical site and subject to a certificate of appropriateness pursuant to Chapter 16A of this Code. Such requests may be approved providing that "non-use variance" request do not exceed the standards set forth in Section 33 36.1(a) and that "special exception" from zoning regulations on parking requirements requests do not reduce parking below thirty (30) percent of that normally required. Further, the requirements of Section 33 36.1(i) shall not apply to administrative variances granted to designated historical sites pursuant to this subsection.~~

- ~~(c) — The Director may vary the setback requirements for screened enclosures, tennis courts, swimming pools and other accessory structures or uses providing that the setback required is not reduced below fifty (50) of that normally required.~~
- ~~(d) — In granting the variation and issuing the permit, the Director shall find:
 - ~~(1) — That the variance will be in harmony with the general appearance and character of the community.~~
 - ~~(2) — That the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.~~
 - ~~(3) — That the proposed addition is designed and arranged on the site in a manner that minimizes aural and visual impact on the adjacent residences while affording the applicant a reasonable use of his land.~~~~
- ~~(e) — The application for variance shall be made by the fee owner of the property on a form prescribed by the Department and shall be submitted to the Department. For the purposes of this section the term "fee owner" shall mean the person who owns and resides at, or owns and intends to reside at, the subject premises. The application shall include an accurately dimensioned plot use plan showing the existing structures on the subject property, the location of the~~

~~proposed addition, the general location and use of existing structures on the adjacent property from which the variance is being requested. The application shall include a letter of intent explaining the reason and justification for the proposed addition and variance. The application shall be accompanied by:~~

- ~~(1) The consent of all the owners of all adjacent or abutting lots to the subject property, and~~
- ~~(2) The consents shall also include the owner of the lot(s) immediately across the street from the subject site.~~

~~If the applicant for an administrative variance is unable to obtain either the consent or objection of a neighboring property owner, the consent of that owner shall not be required when the following conditions have been met.~~

~~(a) Written notice of the request for administrative variance shall be provided to the neighboring property owner. Notice shall be deemed sufficient if it accurately describes the variance requested, if it informs the neighboring property owner of the consequences of a failure to respond, and if it is sent first class mail, return receipt requested, to the property owner of record, as reflected on the Miami Dade Property Appraiser's tax roll, as update.~~

~~(b) The applicant for the administrative variance shall present proof acceptable to the Department that a notice meeting the requirements of (a), above, has been sent, and that one (1) of the following two (2) events has occurred.~~

~~(i) After ninety (90) days from receipt of notice, as indicated on the return receipt, the~~

~~neighboring property owner has failed to respond; or~~

~~(ii) The United States Postal Service has returned the notice as undeliverable.~~

~~(f) Upon receipt of the application for variances, the Director, prior to making his decision, shall have a staff member of his Department inspect the site of the subject property and the surrounding properties to determine what impact, if any, the proposed addition will have on the area. The staff member shall attempt to personally contact the residents and/or owners of the adjacent properties including the property or properties immediately across all adjacent streets, for the purpose of collecting additional information relevant to the application.~~

~~(g) Upon receipt of all necessary information including a staff report, the Director shall review the information and render his decision either approving, modifying or denying the request. A copy of said decision shall be published in a newspaper of general circulation. All approvals or modifications shall not be effective until fifteen (15) days after the Director's decision is published in a newspaper of general circulation. A courtesy notice containing the decision of the Director may be mailed to adjacent and abutting property owners of record, their tenants or their agents, that are duly noted on the application. The failure to mail or receive such courtesy notice shall not affect any action or proceedings taken hereunder. In granting any variances the Director may prescribe any appropriate conditions and safeguards he may feel necessary to protect and further the interest of the area and abutting properties, which may include but not be limited to the following:~~

~~(1) Landscape materials, walls, and fences as required buffering.~~

~~(2) Modifying of the orientation of any openings.~~

~~(3) Modifying of site arrangements.~~

~~The decision of the Director shall be recorded on the official zoning maps of Miami Dade County.~~

~~(h) The applicant, or any aggrieved property owner in the area, may appeal the decision of the Director to the appropriate Community Zoning Appeals Board in the manner provided for appeals of administrative decisions (Section 33-311 of the Code). In the event an appeal is made by an aggrieved property owner in the area, the Director may stop or suspend any construction authorized by the variance, until a decision has been made on the appeal. In the event the Director should determine that the suspension of the construction could cause imminent peril to life or property he may permit the construction to continue upon such conditions and limitations, including the furnishing of an appropriate bond, as may be deemed proper under the circumstances. Upon an appeal by an aggrieved property owner, the provisions of Section 33-311 shall be applicable.~~

~~(i) The right of the Director in so approving requested variances shall be limited to those requests applied to individual lots and where the lot in question is within an area where at least seventy-five (75%) percent of the lots in a radius of three hundred (300) feet from the subject property have already been developed.~~

Section 3. Repeal Of Conflicting Provisions. All other provisions of the Code of Miami-Dade County as made applicable to the Town by Article VIII, Section 8.3 of the Town Charter which are in conflict with this Ordinance are hereby repealed.

Section 4. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion In The Code. It is the intention of the Town Council that the provisions of this Ordinance shall become and made a part of the Town of Miami Lakes Code; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. This Ordinance shall become effective immediately upon adoption on second reading. Notwithstanding the effective date of this Ordinance, completed applications for approval of administrative variances received by Miami-Dade County prior to the effective date of this Ordinance shall be processed by the County and considered by the Town Council under the procedures in effect on the date the completed application was received by the County.

The foregoing Ordinance was offered by Councilmember _____, who moved its adoption on first reading. The motion was seconded by _____ and upon being put to a vote, the vote was as follows:

Councilmember Mary Collins	_____
Councilmember Robert Meador, II	_____
Councilmember Michael Pizzi	_____
Councilmember Nancy Simon	_____
Councilmember Peter Thomson	_____
Vice Mayor Roberto Alonso	_____
Mayor Wayne Slaton	_____

PASSED AND ADOPTED on first reading this _____ day of _____, 2001.

The foregoing Ordinance was offered by Councilmember Thomson, who moved its adoption on second reading. The motion was seconded by Councilmember Collins, and upon being put to a vote, the vote was as follows:

Councilmember Mary Collins	<u>Yes</u>
Councilmember Robert Meador, II	<u>Yes</u>
Councilmember Michael Pizzi	<u>Yes</u>
Councilmember Nancy Simon	<u>Yes</u>
Councilmember Peter Thomson	<u>Yes</u>
Vice Mayor Roberto Alonso	<u>Yes</u>
Mayor Wayne Slaton	<u>Yes</u>

PASSED AND ADOPTED on second reading this 11th day of December, 2001.

Wayne Slaton

ATTEST:

Beatris M. Arguelles
BEATRIS M. ARGUELLES
TOWN CLERK

APPROVED AS TO FORM:

Ann Bonilha
ACTING TOWN ATTORNEY