

ORDINANCE NO. 03-43

AN ORDINANCE OF THE TOWN OF MIAMI LAKES, FLORIDA, AMENDING CHAPTER 33, ARTICLE V OF THE TOWN CODE ENTITLED “AWNINGS, CANOPIES AND TENTS,” SPECIFICALLY AMENDING SECTION 33-71 TO ALLOW EXISTING UNPERMITTED CANOPIES CONSTRUCTED ON OR BEFORE JULY 8, 2003, LOCATED IN THE RU-1, RU-1MA, RU-1MB AND RU-1Z ZONING DISTRICTS THAT VIOLATE THE REQUIRED SETBACKS AND LOT COVERAGE SPECIFIED IN SECTIONS 33-41, 33-49, 33-50 AND 33-284.43 OF THE TOWN CODE TO REMAIN IN PLACE FOR A LIMITED PERIOD OF TIME; PROVIDING CONDITIONS AND RESTRICTIONS FOR SUCH UNPERMITTED CANOPIES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 33, Article V of the Town Code entitled “Awnings, Canopies, and Tents” regulates the placement, construction and installation of patio roof structures (“Canopies”); and

WHEREAS, the Town’s Code Enforcement Department has identified over 140 unpermitted Canopies constructed for use as a patio roof, existing as of July 8, 2003, constructed within the required setbacks in the Town’s Zoning Categories RU-1, RU-1MA, RU-1MB, and RU-1Z; and

WHEREAS, Section 33-71 of the Town Code requires that such Canopies comply with applicable setbacks; and the unpermitted Canopies encroach in the required setbacks for residential districts specified in Sections 33-41, 33-49, 33-50 and 33-284.43 of the Town Code; and

WHEREAS, the unpermitted Canopies were constructed without the proper building permit as required by Section 33-65 of the Town Code and the Florida Building Code; and

WHEREAS, the Town wishes to establish a procedure to allow the unpermitted Canopies to remain in place as legal “non-conforming” structures within the Town’s Zoning Categories RU-1, RU-1MA, RU-1MB, and RU-1Z for a limited period of time; and

WHEREAS, the revisions to the Town Code will accomplish these goals.

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

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

Section 2. Amendment to Code. Section 33-71 of the Town Code is amended to read as follows:

Section 33-71. Use of canopy as roof over patios; screening or plastic.

(a) In all residential districts, where properly fastened to the building, wood, metal or canvas canopies shall be permitted with proper supports, as a roof over open slabs and patios but only where such installations shall comply with all setback applicable to the structure concerned, or as may be modified by this article. Only wood and metal canopies may be enclosed with screening, or approved soft pliable plastic material, provided that the supporting structure and approved plastic enclosure material is designed to meet and comply with the wind load and structural requirements of Chapter 44 of the South Florida Building Code as it applies to screen enclosures and similar structures.

(b) Notwithstanding the provisions of Subsection (a), a canopy utilized as a roof over a patio, installed or constructed without a permit, that does not meet the applicable residential setbacks or lot coverages specified in Sections 33-41, 33-49, 33-50 and 33-284.43, may remain in place, provided that all of the following conditions are complied with by the owner of the property:

¹ (Coding: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.)

- (1) The property owner provides proof that the canopy existed on or before July 8, 2003;
- (2) The property owner submits to the Town with the building permit application, written consent to the location of the canopy from all owners of adjacent or abutting lots. Such consent shall be on a form provided by the Town the fee required in section 8CC-10 of the Town Code for work performed without a permit will be waived;
- (3) The property owner applies for and obtains an after the fact building permit from the Town. Review of the permit application by the Building Official shall be based upon compliance with the Florida Building Code;
- (4) The location of the canopy does not exceed 50% of the required setbacks as measured from all adjoining or abutting lots;
- (5) The maximum lot coverage, including the square footage of the canopy, does not exceed 15% of the required lot coverage; and
- (6) The permit application is submitted no later than December 15, 2003.

(c) A canopy permitted under Subsection (b) shall be considered a “legal nonconforming use” under Section 33-35 of the Town Code. The use shall cease and the canopy shall be removed by the property owner upon either the sale of the property, three (3) years from the effective date of this Ordinance or if the nonconforming use violates any of the provisions of Section 33-35 of the Town Code, whichever event occurs earlier.

(d) Any property registered with the Building Official prior to August 8, 2003 as containing an unpermitted canopy shall be considered meeting the requirement of Subsection (b)(1) without further documentation. A property owner whose property is not listed on the Building Official’s register by August 8, 2003 shall be required to submit to the Building Official proof in the form of aerials, property appraiser cards, or other documentary evidence, showing that the canopy existed as of the date specified in Subsection (b)(1).

(e) If the property is sold prior to the expiration of the timeframe specified in Subsection (c), the property owner shall include in the contract for sale of the property a disclaimer that reads as follows: “The canopy placed on the real property that is the subject of this transaction has been permitted under Section 33-71 of the Town Code which requires the removal of the canopy no later than the date of the transfer of ownership of the property.”

(f) Any property owner not able to obtain a permit as required in Subsection (b) shall be required to obtain a demolition permit from the Town and remove the canopy from the property no later than December 15, 2003. The fee for any demolition permit obtained pursuant to this section shall be waived.

(g) Any violation of this Subsection shall be remedied by the Town by all available legal proceedings, including but not limited to, the provisions of Chapter 162, Florida Statutes, the Florida Building Code and Chapter 8CC of the Town Code.

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.

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

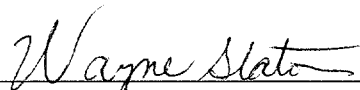
Councilmember Mary Collins	Yes
Councilmember Robert Meador, II	Yes
Councilmember Michael Pizzi	Yes
Councilmember Nancy Simon	Yes
Councilmember Peter Thomson	Yes
Vice Mayor Roberto Alonso	Yes
Mayor Wayne Slaton	Yes

PASSED AND ADOPTED on first reading this 11th day of September, 2003.

The foregoing Ordinance was offered by Councilmember **Collins**, who moved its adoption on second reading. The motion was seconded by **Mayor Slaton**, and upon being put to a vote, the vote was as follows: **6-1**

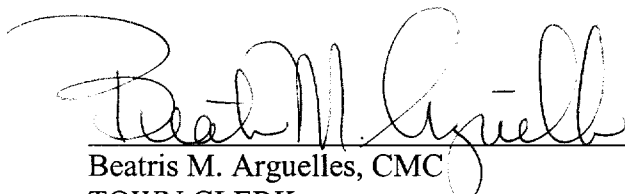
Councilmember Mary Collins	Yes
Councilmember Robert Meador, II	Yes
Councilmember Michael Pizzi	Yes
Councilmember Nancy Simon	No
Councilmember Peter Thomson	Yes
Vice Mayor Roberto Alonso	Yes
Mayor Wayne Slaton	Yes

PASSED AND ADOPTED on second reading this 9th day of October, 2003.



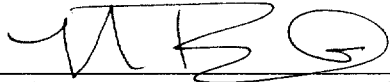
Wayne Slaton
MAYOR

ATTEST:



Beatris M. Arguelles, CMC
TOWN CLERK

Approved as to form and legality for the use
and benefit of the Town of Miami Lakes only:



Weiss, Serota, Helfman, Pastoriza, Guedes
Cole & Boniske, P.A.
TOWN ATTORNEY

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