

ORDINANCE NO. 12-143

AN ORDINANCE OF THE TOWN OF MIAMI LAKES, FLORIDA, AMENDING ARTICLE 2, DECISION MAKING AND ADMINISTRATIVE BODIES, ARTICLE 3, DEVELOPMENT APPROVAL PROCEDURES AND ARTICLE 12, FEES; AMENDING THE MEMBERSHIP AND QUALIFICATION REQUIREMENTS FOR MEMBERS OF THE PLANNING AND ZONING BOARD; PROVIDING FOR DESIGNATION OF THE PLANNING AND ZONING BOARD AS "LOCAL PLANNING AGENCY" (LPA) PURSUANT TO F.S. 163.3174; PROVIDING FOR AMENDMENT OF THE CRITERIA FOR APPROVAL OF REQUESTED VARIANCES; PROVIDING FOR ELIMINATION OF SUPERMAJORITY VOTE REQUIREMENTS FOR APPROVAL OF A VARIANCE; PROVIDING FOR DELEGATION OF CERTAIN ADDITIONAL REVIEW AUTHORITY TO THE TOWN MANAGER OR HIS DESIGNEE; PROVIDING FOR ESTABLISHMENT OF A LIMITED PARKING WAIVER PROCESS; PROVIDING FOR REVIEW OF CERTAIN CONDITIONAL AND UNUSUAL USE REQUESTS BY THE TOWN COUNCIL; PROVIDING FOR AN ANNUAL REVIEW OF CERTAIN CONDITIONAL USE, UNUSUAL USE AND LIMITED PARKING WAIVER REQUESTS; AND, PROVIDING FOR FEES FOR ANNUAL CONDITIONAL USE RENEWALS AND LIMITED PARKING WAIVER REQUESTS AND RENEWALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; PROVIDING FOR INCLUSION IN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Miami Lakes (the "Town") adopted Chapter 33 of the Miami -- Dade County Code (2000), entitled "Zoning" as the Town of Miami Lakes Land Development Code ("the Town LDC") by Section 8.3 of the Town Charter; and

WHEREAS, subsequent to its adoption, the Town LDC has been amended by various ordinances adopted by the Town of Miami Lakes (the "LDC Ordinances") to better address and serve the needs of the Town; and

WHEREAS, on February 17, 2009, the Town adopted Ordinance 09-112, providing for the creation of a Planning and Zoning Board and delegation of duties to act on certain development applications to the Planning and Zoning Board; and

WHEREAS, the Town Council desires to amend the qualifications for membership on the Planning and Zoning Board; and

WHEREAS, Section 163.3174, Florida Statutes provides that each local government in the State shall designate a local planning agency to review proposed rezonings, comprehensive plan amendments and similar proposals; and

WHEREAS, the Town Council desires to designate the Planning and Zoning Board as the Local Planning Agency (LPA) for the Town of Miami Lakes; and

WHEREAS, the Town Council desires to abolish the undue hardship criteria for zoning variances in the Land Development Code; and

WHEREAS, the Town Council desires to abolish the requirement for a supermajority vote of the Planning and Zoning Board to approve zoning variances under the practical difficulty criteria; and

WHEREAS, the Town Council desires to assign authority to act on certain development applications to the Town Staff; and

WHEREAS, the Town Council desires to establish an administrative limited waiver process for certain off-street parking requirements where differing hours of operation of businesses or other conditions can be demonstrated to justify such a waiver; and

WHEREAS, the Town Council desires to transfer authority for acting upon certain Conditional and Unusual Use requests from the Planning and Zoning Board to the Town Council; and

WHEREAS, the proposed amendments are in conformance with all applicable requirements of the Town's Code of Ordinances, including the LDC; and

WHEREAS, the proposed amendments will not be in conflict with the public interest, and are in harmony with the purpose and intent of the Comprehensive Plan; and

WHEREAS, the Town Council, sitting as the Local Planning Agency, reviewed this ordinance at its December 13, 2011 meeting, and determined it to be consistent with all policies contained in the Town Comprehensive Plan and Land Development Code, and voted to recommend approval; and

WHEREAS, the Town Council has reviewed this Ordinance at a duly noticed hearing, considered the recommendations of the Local Planning Agency, the Town staff, and comments from the public, and determined that it is consistent with all policies contained in the Town's Comprehensive Plan; and

WHEREAS, the Town Council hereby finds and declares that adoption of this Ordinance is necessary, appropriate and advances the public interest.

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

Section 1. **Recitals.** Each of the above stated recitals are true and correct and are incorporated herein by this reference.

Section 2. Article 2, Decision Making and Administrative Bodies, of the Town LDC is hereby amended as follows¹:

ARTICLE 2
DECISION MAKING AND ADMINISTRATIVE BODIES

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DIVISION 2.2 - LOCAL PLANNING AGENCY

¹ Additions to the text are shown in underline and deletions from the text are shown in ~~strikethrough~~.

Pursuant to and in accordance with §163.3174, Florida Statutes, the Planning and Zoning Board ~~Town Council~~ is ~~established~~ designated as the Local Planning Agency for the Town of Miami Lakes, and shall include a non-voting representative of the Miami Dade County School Board consistent with Section 163.3174, Florida Statutes. The Local Planning Agency shall have the powers and duties as provided in the referenced statute, including but not limited to:

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DIVISION 2.25 – PLANNING AND ZONING BOARD

(b) Membership and Qualifications.

6. A member ~~may~~ shall be selected from any one of the categories in the list below:

- (1) ~~Architect or Engineer.~~
- (2) ~~Developer or General Contractor.~~
- (3) Landscape Architect ~~Real Estate Professional.~~
- (4) Planner.
- (5) Land use/zoning Attorney.
- (6) Engineer ~~Citizen at Large~~
- (7) Surveyor

- a. Selections to the Planning and Zoning Board are encouraged so that the Planning and Zoning Board includes a variety of the professionals in this list. The amended requirements for membership and qualifications shall become effective following the expiration of the individual terms of appointed Planning and Zoning Board members currently serving as of December 1, 2011. Thereafter, all vacancies, appointments and re-appointments shall be filled in accordance with the requirements of this section; however, currently serving members of the Planning and Zoning Board shall be grandfathered in, that is they may continue to serve until the end of their terms, and for so long as they are continuously reappointed as members.
- b. The requirement that newly appointed Planning and Zoning Board members shall come from one of the categories listed herein may be waived as to a particular appointment by a supermajority vote of the Town Council.

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(g) **Duties.**

The P&Z Board shall have the following powers and duties:

1. To review and act upon variances to setback lines, frontage requirements, height limitations, lots size restrictions, yard requirements, fences and walls, lot coverage, impervious surface ratio, open space, landscaping, signs and any other provisions of this Land Development Code, in accordance with the provisions of this Land Development Code governing variances, where such applications do not also require a public hearing for a related site plan application and/or conditional use, and where authority to act upon such variances is not otherwise delegated to Town Staff. Any variance application which also requires a public hearing for a related site plan application and/or conditional use application shall be heard by the Town Council jointly with the site plan application/conditional use application.
2. ~~To review and act upon applications for conditional uses, in accordance with the provisions of this Land Development Code governing conditional uses, where such applications do not also require a public hearing for a related site plan application. Any conditional use application which also requires a public hearing for a related site plan application shall be heard by the Town Council jointly with the site plan application.~~

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DIVISION 2.3 - ADMINISTRATIVE OFFICIAL

The Administrative Official shall be the Town Manager or his or her designee, who shall provide technical support and advice for the preparation and implementation of the Comprehensive Plan and this Land Development Code, and shall perform such other functions as requested by the Town Council and authorized by this Land Development Code, and consistent with the Florida Building Code. Specifically, and without limitation, the Administrative Official shall have the following duties:

* * * * *

(q) To review and act upon applications for conditional uses, in accordance with the provisions of this Land Development Code governing conditional uses, where such applications involve a use consisting of less than four thousand (4,000) gross square feet of floor area.

(r) To review and act upon applications for administrative waivers of off-street parking requirements for properties with multiple uses where an applicant can demonstrate that differing hours of operations of existing businesses, or other conditions, justify such a waiver. No waiver shall be granted greater than fifteen (15) percent of off-street parking requirements for a single use, or that would result in a cumulative total greater than twenty (20) percent of off-street parking requirements for an entire property. The Administrative Official, in consultation with the Town Engineer, shall develop detailed criteria to evaluate such applications.

Section 3. Article 3, Development Approval Procedures, of the Town LDC is hereby

amended as follows:

ARTICLE 3
DEVELOPMENT APPROVAL PROCEDURES

* * * * *

DIVISION 3.2 - DEVELOPMENT APPROVALS BY THE ADMINISTRATIVE

OFFICIAL

(f) **Administrative (de minimum) Variances.** When the literal or strict enforcement of the provisions of this Land Development Code causes unusual, exceptional, unnecessary difficulties or undue hardship or injustice because of the size of the tract, parcel or lot, the topography, the condition or nature of adjoining areas or the existence of other unusual physical conditions, the Administrative Official may grant a variance to the setback, area and height requirements found in this Land Development Code in accordance with the following procedure:

4. An administrative variance granted under this section shall not be permitted for pre-construction applications or complete reconstruction of a building and shall only be applicable for accessory structures, accessory buildings and additions and remodelings to existing buildings. The sum of all variances approved by the administrative official under these administrative procedures shall not exceed twelve (12) inches for setbacks, and area and ~~three (3) inches~~ for fence height for each property or lot.

(g) **Minor Conditional Uses.** Where a proposed conditional use would occupy less than 4,000 gross square feet of floor area, the Administrative Official shall have authority to act upon such applications consistent with criteria for review in Division 3.3. Such minor conditional uses shall be subject to annual renewal through a process to be established by the Administrative Official.

[subsequent renumbering and relettering as necessary]

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DIVISION 3.3 - CONDITIONAL USE APPROVAL

(b) **Review Procedures.**

3. Specific Criteria for Approving a Conditional Use. A conditional use shall be permitted upon a finding by the Town Council, ~~or designated Town board~~ or Administrative Official, as applicable, that the proposed use satisfies the criteria herein specified. A conditional use shall be denied if the Town Council, ~~or designated Town board~~ or Administrative Official, as applicable, determines that the proposed use does not meet the criteria herein provided or is adverse to the public interest. The applicant shall demonstrate the following:

e. Hazardous Waste. No conditional use which generates hazardous waste or uses hazardous materials shall be located in the Town unless the specific location is consistent with the Comprehensive Plan and Land Development Code, and does not adversely impact wellfields, aquifer recharge areas, or other conservation resources, as may be applicable now or in the future. The proposed use shall not generate hazardous waste or require use of hazardous materials in its operation unless the Town Council, ~~or designated Town board~~ or Administrative Official, as applicable, approves conditions requiring mitigative techniques designed to prevent any adverse impact to the general health, safety and welfare. The mitigation plan and conditions imposed by the Town Council, ~~or designated Town board~~ or Administrative Official, as applicable, shall provide for appropriate identification of hazardous waste and hazardous material, and regulate its use, storage and transfer consistent with best management principles and practices as required by the appropriate permitting agencies.

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DIVISION 3.5 - VARIANCES

(a) **Generally.**

As used in this Land Development Code, a variance is a relaxation of the terms of the Land Development Code, where such relaxation in term will not be contrary to the public interest and where, ~~owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship~~ The Town Council or designated Town Board finds that the criteria for Practical Difficulty as outlined below justifies such relaxation.

* * * * *

(f) **Criteria for Approval.**

After the hearing, the Town Council or designated Town Board, as applicable, shall adopt a Development Order approving, approving with modifications and/or conditions, or denying the variance request.

1. ~~Undue Hardship Criteria.~~ In order to authorize any variance from the requirements of this Land Development Code on the basis of undue hardship, the

Town Council or designated board or agency shall find all of the following criteria are met, however, the purchase of property which is an illegal nonconformity with this Land Development Code shall not be considered a hardship for granting of a variance, nor shall conditions peculiar to the property owner be considered:

- a. ~~Variance Consistent with Authorized Powers.~~ That the variance is in fact a variance as set forth in the Land Development Code and within the province of the Town Council;
- b. ~~Existence of Special Conditions or Circumstances.~~ That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;
- e. ~~Conditions Not Created by Applicant.~~ That the special conditions and circumstances do not result from the actions of the applicant;
- d. ~~Special Privileges Not Conferred.~~ That granting the variance requested will not confer on the applicant any special privilege that is denied by this Land Development Code to other similarly situated lands, buildings, or structures in the same zoning district;
- e. ~~Hardship Conditions Exist.~~ That literal interpretation of the provisions of this Land Development Code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Land Development Code and would work unnecessary and undue hardship on the applicant.
- f. ~~Only the Minimum Variance Granted.~~ That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure; and
- g. ~~Not Injurious to Public Welfare or Intent of the Land Development Code.~~ That the grant of the variance will be in harmony with the general intent and purpose of the Comprehensive Plan and this Land Development Code and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

2.1. Practical Difficulty. If the application does not meet the Undue Hardship criteria, the application may be considered under the requirements of Practical Difficulty as set forth herein. Any approval or approval with modifications and/or conditions, of a variance based on practical difficulty shall require a supermajority vote of the members of the Town Council or designated Town board present at the meeting. In order to authorize any variance application from the requirements of this Land Development Code on the basis of practical difficulty, the Town

Council or designated Town board shall balance the rights of property owners in the Town as a whole against the need of the individual property owner to deviate from the requirements of the Land Development Code based on an evaluation of the factors below. All of the factors should be considered and given their due weight, however, no single factor is dispositive:

- a. Whether the Town has received written support of the specifically identified variance requests from adjoining property owners;
- b. Whether approval of the variance(s) would be compatible with development patterns in the Town;
- c. Whether the essential character of the neighborhood would be preserved;
- d. Whether the variance(s) can be approved without causing substantial detriment to adjoining properties;
- e. Whether the variance(s) would do substantial justice to the property owner as well as to other property owners justifying a relaxation of this Land Development Code to provide substantial relief;
- f. Whether the plight of the applicant is due to unique circumstances of the property and/or applicant which would render conformity with the strict requirements of the Land Development Code unnecessarily burdensome; and
- g. Whether the special conditions and circumstances which exist are the result of actions beyond the control of the applicant.

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DIVISION 3.9 - PUBLIC HEARING AND NOTICE

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(k) Minor Conditional Uses. Administrative action on applications for minor conditional uses pursuant to Division 2.3(q) and 3.2(g) shall be noticed as follows:

1. Posting of the property subject to the application 15 days prior to final administrative action.
2. Mailed notice to the property owners of record within five-hundred (500) feet of the property which is the subject to the application 15 days prior to final administrative action.

[subsequent renumbering and relettering as necessary]

**TABLE 3-1
NOTICE REQUIREMENTS**

Permit	Notice Section	Posted	Published	Mailed
Appeal of Administrative Official	3.9 (j)(1)	10 days prior to hearing	10 days prior to hearing	500 feet radius
Variance	3.9 (h)	10 days prior to hearing	10 days prior to hearing	500 feet radius
Other Development Permits (i.e., site plan, conditional uses, plats, Vacations)	3.9 (h)	10 days prior to hearing	10 days prior to hearing	500 feet radius
<u>Minor Conditional Uses</u>	<u>3.9(k)</u>	<u>15 days prior to Administrative Action</u>	<u>Not applicable</u>	<u>500 feet radius</u>
Administrative Variance	3.9 (i)	30 days prior to Administrative Action	30 days prior to Administrative Action	Adjacent property owners
Administrative Site Plan	3.9 (j)	15 days prior to Administrative Action	Not applicable	Not applicable
Administrative Site Plan*	3.9 (j)	15 days prior to Administrative Action	Not applicable	Adjacent property owners
Comprehensive Development Master Plan – Town	3.9 (f)(1)	No	163.3184, F.S.	2500 feet radius for Map amendment
Comprehensive Development Master Plan – Owner	3.9 (f)(2)	30 days prior to hearing for Map amendment	163.3184, F.S.	2500 feet radius for Map amendment
Land Development Code - Town	3.9(g)(1)	No	166.041, F.S.	2500 feet radius for Map amendment
Land Development Code-- Owner	3.9 (g)(2)	30 days prior to hearing for Map amendment	166.041, F.S.	2500 feet radius for Map amendment

Section 4. Article 12, Fees, of the Town LDC is hereby amended as follows:

**ARTICLE 12
FEES**

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DIVISION 12.2 APPLICATION FEES FOR PLANNING AND ZONING APPROVALS

Development Approval Requested	Application Fee	Deposit
* Cost Deposit, in addition to the Application Fee, for Notification and Recording Costs for all applications which require notification and recording and are not cost recovery		
After-the-fact Development Approval	\$500 plus the Application Fees or Cost Recovery participation for the applicable Development Approval	
Variances		
<i>Variance Application Fees Cover up to three (3) variances.</i>	\$50 for each additional Variance after the first 3	
<i>Administrative</i>	\$350 plus notification and recording costs	\$650 *
<i>Public Hearing</i>		
One Single Family, Two Family, or Townhouse Unit	\$750 plus notification and recording costs	\$650 *
Multi-Family	\$1100 plus notification and recording costs	\$650 *
Commercial and Industrial	\$1700 plus notification and recording costs	\$650 *
Signs	\$1100 plus notification and recording costs	\$650 *
All Others	\$1100 plus notification and recording costs	\$650 *
Site Plan Review		
<i>Administrative</i>		
Individual Single Family on Waterfront Lot	\$100 plus notification costs	\$50 *
Individual Townhouse	\$100 plus notification costs	\$50 *
Individual Single Family or Two Family Residential	\$100 plus notification costs	\$50 *

Development Approval Requested	Application Fee	Deposit
All Others	Cost Recovery	\$1000
<i>Public Hearing</i>		
Single Family, Two Family and Townhouse Developments	Cost Recovery	\$3500
All Others	Cost Recovery	\$3500

Conditional Uses		
Liquor Spacing	\$1100	\$650 *
All Others (<u>Public Hearing</u>)	Cost Recovery	\$5000
<u>Minor Conditional Uses</u>	<u>Cost Recovery</u>	<u>\$1000*</u>
<u>Annual Renewal of Minor Conditional Uses</u>	\$150	
<u>Administrative Parking Waiver</u>	<u>\$250 plus notification and recording costs</u>	<u>\$750*</u>
Development Approval Extension		
By Administrative Official	\$250 plus notification and recording costs	\$250 *
By Town Council	\$750 plus notification and recording costs	\$650 *
Modification of an Existing Resolution		
Individual Single Family, Two Family or Townhouse Unit	\$750 plus notification and recording costs	\$650 *
All Others	Cost Recovery	\$1500
Amend Comprehensive Plan, Land Use Map, Text of Land Development Regulations, or Zoning Map	Cost Recovery	\$5000
Plats		
Preliminary	Cost Recovery	\$5000
Final	Cost Recovery	\$5000
Waiver of Plat / Lot Split	Cost Recovery	\$5000

Right-of-Way Vacation	Cost Recovery	\$5000
Appeal of Administrative Decision		
Appeal of Administrative Variance for Individual Single Family, Two-Family, or Townhouse	\$1500 plus notification and recording costs	\$650 *
Appeal of All Other Administrative Variances	\$2500 plus notification and recording costs	\$650 *
Appeal of Administrative Site Plan for Individual Single Family, Two-Family, or Townhouse (including Waterfront Lots)	\$1500 plus notification and recording costs	\$650 *
Appeal of All Other Administrative Site Plans	\$2500 plus notification and recording costs	\$650 *
Appeal of All Other Administrative Decisions	\$2500 plus notification and recording costs	\$650 *
All Other Public Hearings		
	\$1100 plus notification and recording costs	\$650 *
Zoning Letters		
Individual Residential Lot	\$100	
All Others	\$150	
Review of Alcoholic Beverage License		
Special Event	\$50	
All Others	\$125	
Development Agreements		
	Cost Recovery	\$5000
Concurrency		
Exemption	\$750	
Determination (without traffic impact analysis)	\$750	
Determination (with traffic impact analysis)	Cost Recovery	\$1500
Reservation	Cost Recovery	\$5000

Proportionate Fair Share (including agreement)	Cost Recovery	\$5000
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Section 5. Repeal of Conflicting Provisions. All provisions of the Code of the Town of Miami Lakes that are in conflict with this Ordinance are hereby repealed.

Section 6. 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 7. Inclusion in the Town Code. It is the intention of the Town Council, and it is hereby ordained, that the provisions of this Ordinance shall become and be made part of the Town Code and that if necessary the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word “Ordinance” shall be changed to “Article”, “Division” or other appropriate word.

Section 6. Effective Date. That this Ordinance shall be effective immediately upon its adoption on second reading.

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

Mayor Michael Pizzi	yes
Vice-Mayor Ceasar Mestre	yes
Councilmember Mary Collins	yes
Councilmember Tim Daubert	yes
Councilmember Nelson Hernandez	yes

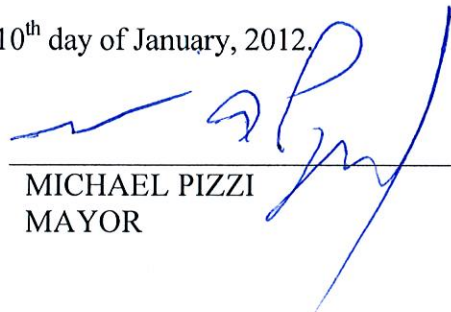
Councilmember Nick Perdomo absent
Councilmember Richard Pulido yes

PASSED AND ADOPTED on first reading this 13th day of December, 2011.

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

Mayor Michael Pizzi yes
Vice-Mayor Ceasar Mestre yes
Councilmember Mary Collins yes
Councilmember Tim Daubert no
Councilmember Nelson Hernandez yes
Councilmember Nick Perdomo yes
Councilmember Richard Pulido no

PASSED AND ADOPTED on second reading this 10th day of January, 2012.



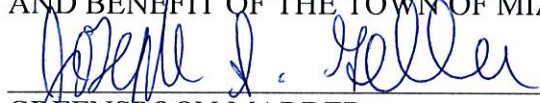
MICHAEL PIZZI
MAYOR

ATTEST:



MARJORIE TEJEDA
TOWN CLERK

APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF MIAMI LAKES ONLY:



JOSEPH J. HELLER
GREENSPOON MARDER
TOWN ATTORNEY