

RESOLUTION NO. 06-378 Z

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, APPROVING 1) A CONDITIONAL USE FILED IN ACCORDANCE WITH DIVISION 3.3 OF THE TOWN CODE TO WAIVE SECTION 33.150 OF THE TOWN CODE TO PERMIT A PROPOSED SMOKING CLUB IN CONJUNCTION WITH AN EXISTING CIGAR STORE WITH ON THE PREMISES SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES WITHIN 2,500 FEET OF A SCHOOL OR RELIGIOUS FACILITY AND WITHIN 1,500 FEET FROM OTHER EXISTING ALCOHOLIC BEVERAGE USES (THE “CONDITIONAL USE”); AND 2) A VARIANCE FILED IN ACCORDANCE WITH DIVISION 3.5 OF THE TOWN CODE TO WAIVE SECTION 33.95 OF THE TOWN CODE TO PERMIT A TENANT IN A SHOPPING CENTER TO LOCATE A PARAPET MOUNTED SIGN OFF PREMISES FROM WHERE THE PRODUCTS ARE SOLD IN THE BU-1A DISTRICT (THE “VARIANCE”), FOR PROPERTY LOCATED AT 15458 N.W. 77TH COURT, MIAMI LAKES, FLORIDA; PROVIDING FINDINGS; PROVIDING FOR APPROVAL; PROVIDING CONDITIONS OF APPROVAL; PROVIDING FOR APPEAL; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Divisions 3.3 and 3.5 of the Town of Miami Lakes (the “Town”) Land Development Code (“LDC”), Havana Group Cigars, Inc. (the “Applicant”) has applied to the Town for approval of the following : 1) a conditional use filed in accordance with Division 3.3 of the Town Code to waive Section 33.150 of the Town Code to permit a proposed smoking club in conjunction with an existing cigar store with on the premises sale and consumption of alcoholic beverages within 2,500 feet of a school or religious facility and within 1,500 feet from other existing alcoholic beverage uses (the “Conditional Use”); and 2) a variance filed in accordance with Division 3.5 of the Town Code to waive Section 33.95 of the

Town Code to permit a tenant in a shopping center to locate a parapet mounted sign off premises from where the products are sold in the bu-1a district (the "Variance"), for property located at 15458 N.W. 77th Court (legal description: Folio # 32-2015-006-0010; ROYAL OAKS PLAZA, PLAT BOOK 130-29, TRACT A LESS COMM NE COR OF TRACT A SLY AD 75.02FT S344.19FT SLY & WLY AD 199.11FT W59.37FT FOR POB CONT W173.90FT NLY AD 23.42FT N103.06FT NLY & ELY 14.92FT E173.22FT S133.30FT TO POB; of the Public Records of Miami-Dade County, Florida); and

WHEREAS, Division 3.3 of the LDC sets forth the authority of the Town Council to consider and act upon an application for the Conditional Use; and

WHEREAS, Division 3.5 of the LDC sets forth the authority of the Town Council to consider and act upon an application for a variance; and

WHEREAS, in accordance with Division 3.9 of the LDC proper notice has been mailed to the appropriate property owners of record; the public hearing on the Conditional Use and Variance have been noticed for Tuesday, February 21, 2006 at 7:00 p.m. at Miami Lakes Middle School, 6425 Miami Lakeway North, Miami Lakes, FL 33014; and all interested parties have had the opportunity to address their comments to the Town Council; and

WHEREAS, Town Staff has reviewed the application and recommends approval of the Conditional Use and Variance with conditions as set forth in the Staff Analysis and Recommendation dated February 21, 2006 (the "Staff Analysis"), and incorporated into this Resolution by this reference.

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

Section 1. Recitals.

The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Findings.

(a) **Conditional Use.** In accordance with Division 3.3 of the LDC, the Town Council finds that the Applicant meets the criteria in Division 3.3(c), which are as follows:

1. Land Use Compatibility; and
2. Sufficient Site Size, Site Specifications, and Infrastructure to Accommodate the Proposed Use; and
3. Compliance with the Comprehensive Plan and Land Development Code; and
4. Proper Use of Mitigative Techniques; and
5. Hazardous Waste.

(b) **Variance.** In accordance with Division 3.5(f) of the Town Code, the Town Council, having considered the testimony and evidence in the record presented by all parties, finds that the Applicant does not meet all of the requirements of Division 3.5(f)(1)(a) thru (g) of the Town Code, which are as follows:

1. 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; and
2. 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; and
3. Conditions Not Created by Applicant. That the special conditions and circumstances do not result from the actions of the Applicant; and
4. 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; and

5. 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. 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; and
6. 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
7. 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

with regard to the Variance; and

- (c) the Applicant does not meet all of the criteria in Division 3.5(f)(1)(a) thru (g) of the Town Code, but the Town Council determines that:
 1. No objections have been filed by adjoining or directly affected property owners; and
 2. Approval of the Variance is justified by practical difficulty on the part of the Applicant.

Section 3. Approval.

- (a) No. 1 Conditional Use requesting the location of a smoking club in conjunction with an existing cigar store with on the premises sale and consumption of alcoholic beverages within 2,500 feet of a school or religious facility and within 1,500 feet from other existing alcoholic beverage uses is approved.
- (b) No. 2 Variance requesting the placement of a parapet mounted sign off premises from where the products are sold in the BU-1A District is approved.

Section 4. Conditions of Approval.

(a) The Conditional Use is granted subject to the following conditions:

1. That in approval of the plan, the same be in accordance with that submitted for the hearing entitled "Royal Oaks Plaza" with parking calculations, as prepared by Felix Pardo and Associates, Inc., dated 11-12-03, revised 11-29-04 and consisting of 1 sheet, and a plan entitled "Havana Group Cigar Floor Plan", as prepared by Raul R. Sora, RA 7179, dated 10-03-05 and consisting of one sheet; and a "liquor survey", as prepared by Caribbean Land Surveyors, Inc., dated 12-01-05, and consisting of 1 sheet.
2. That the use be established and maintained in accordance with the approved plan, and that the 350 square foot smoking club area be defined with a change in floor pattern or tables with a sign that states for "smoking club and wine use only".
3. That the Smoking Club use permitted to sell and consume wine be operated solely as an accessory use to the cigar store, and if the cigar store use is terminated, the smoking club use will automatically expire.
4. That the operating hours for the Smoking Club not extend beyond those for the Cigar Store.

(b) The Variance is granted subject to the following conditions:

1. That the parapet mounted sign shall be located within 100' of the subject establishment with the property owner's written consent, and in accordance with Section 33-105 Permanent Point of Sale Signs for Shopping Centers.
- (c) The Applicant shall record the Resolution in the public records of the Clerk of the Circuit and County Court and shall return the original order to the Town Clerk before a building permit is issued for the sign.
- (d) That the applicant obtain a Certificate of Use and Occupancy, and promptly renew the same annually, upon compliance with all the terms and conditions, the same subject to cancellation upon violation of any of the conditions.

Section 5. Appeal.

In accordance with Division 3.10 of the Town Code, the Applicant, or any aggrieved property owner in the area, may appeal the decision of the Town Council by filing of a notice of appeal in accordance with the Florida Rules of Appellate Procedure.

Section 6. Violation of Conditions.

Failure to adhere to the terms and conditions of this Resolution shall be considered a violation of the Town Code and persons found violating the conditions shall be subject to the penalties prescribed by the Town Code, including but not limited to, the revocation of the approval granted in this Resolution. The Applicant understands and acknowledges that it must comply with all other applicable requirements of the Town before they may commence construction or operation, and that the foregoing approvals in this Resolution may be revoked by the Town Council at any time upon a determination that the Applicant is in non-compliance with the Town Code.

Section 7. Effective Date.

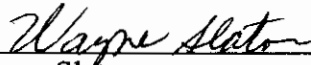
This Resolution shall take effect thirty (30) days following the date it is filed with the Town Clerk. If during that time frame, the decision of the Town Council is appealed as provided in the Land Development Code and the Florida Rules of Appellate Procedure, the appeal shall stay the effectiveness of this Resolution until said appeal is resolved by a court of competent jurisdiction.

The foregoing Resolution was moved upon the practical difficulty standard in Division 3.5(f)(2) of the Town Code by Mary Collins and Seconded by Nancy Simon, and upon being put to a vote the motion carried with each Council Member voting as follows:

Mayor Wayne Slaton	yes
Vice Mayor Robert Meador	absent
Councilmember Roberto Alonso	absent
Councilmember Mary Collins	yes
Councilmember Michael Pizzi	yes
Councilmember Nancy Simon	yes
Councilmember Dorothy Cook	yes

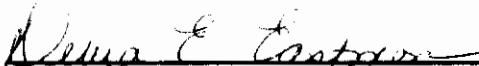
PASSED AND ADOPTED this twenty-first day of February, 2006.

This Resolution was filed in the Office of the Town Clerk on this twenty-first day of February, 2006.



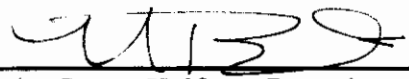
Wayne Slaton
MAYOR

ATTEST:



Debra E. Eastman, MMC
TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR USE ONLY BY THE TOWN OF MIAMI LAKES:



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