

RESOLUTION NO. 03-135 Z

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA; APPROVING A NON-USE VARIANCE OF SECTION 33-259(6.1) OF THE TOWN CODE OF LOT COVERAGE REQUIREMENTS FOR PROPERTY ZONED IU-C, LYING SOUTH OF NW 167TH STREET AND WEST OF THEORETICAL NW 63RD AVENUE, MIAMI LAKES, FLORIDA (AND AS LEGALLY DESCRIBED IN COMPOSITE EXHIBIT "A", PAGE 1, ATTACHED HERETO); TO PERMIT THE APPLICANT TO CONSTRUCT AN AUTO DEALERSHIP WITH A REPAIR/SERVICE BAY AREA OF 26% OF THE GROSS BUILDING AREA WHERE A MAXIMUM OF 15% IS ALLOWED; PROVIDING FINDINGS; PROVIDING FOR APPROVAL; PROVIDING CONDITIONS FOR APPROVAL; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR APPEAL.

WHEREAS, pursuant to Section 33-311 of the Town Code ¹, the Craig Collection, Inc. (the "Applicant") has applied² to the Town for approval of a non-use variance, (the "Variance") on property legally described in page 1 of composite exhibit "A" (the "Property"); and

WHEREAS, Section 33-311 of the Town Code sets forth the authority of the Town Council to consider and act upon an application for a non-use variance; and

WHEREAS, in accordance with Section 33-310 of the Town Code, notice was provided and a public hearing was held on the Variance, and all interested parties have had the opportunity to address their comments to the Town Council; and

WHEREAS, the Director for the Miami-Dade County Department of Planning and Zoning acting in her capacity as Town Staff, has reviewed the application and recommends denial of the Variance without prejudice, as set forth in the Memorandum dated April 10, 2003 attached hereto as composite exhibit "A" (the "Memorandum"); and

¹ Pursuant to Section 8.3 of the Town Charter and Ordinance 2001-01, the applicable provisions of Chapter 33 of the Miami-Dade County Code of Ordinances serve as the Town's Zoning Code.

² Application No. Z-02-317.

WHEREAS, the Town’s principal planner has subsequently reviewed the application and recommends approval of the Variance; and

WHEREAS, the Applicant owns a five acre parcel of property located immediately adjacent to the west of the Property, as legally described in exhibit “B” attached hereto (the “Vacant Parcel”); and

WHEREAS, the Vacant Parcel borders residential development; and

WHEREAS, the Applicant has agreed to voluntarily proffer a covenant requiring the Applicant, its successors, or assigns to: (a) provide to staff, for its review and approval, plans for a level berm of uniform height between the Vacant Parcel and adjacent residential development; (b) to erect and maintain the berm in conformance with the Code’s requirements; and (c) to keep and maintain the Vacant Parcel in a clean and orderly fashion in keeping with the Code’s requirements; and

WHEREAS, the Town Council has determined that the Variance as conditioned satisfies the Code’s requirements.

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.

In accordance with Section 33-311 (A)(4)(b) of the Town Code, The Town Council finds:

- (1) That the Variance as conditioned, maintains the basic intent and purpose of the zoning, subdivision and other land use regulations to protect the general welfare of the public, particularly as it affects the stability and appearance of the Town.

- (2) That the Variance as conditioned, is compatible with the surrounding land uses.
- (3) That the Variance as conditioned, would not be detrimental to the Town.

Section 3. Approval.

The Town Council approves the requested Variance to the Applicant from Section 33-259(6.1) of the Town Code for the property lying south of NW 167TH Street and west of theoretical NW 63RD Avenue, Miami Lakes Florida (exhibit "A," page 1) to permit an auto dealership with a repair/service bay area of 26% of the gross building area (15% maximum allowed) subject to the conditions stated in Section 4 below.

Section 4. Conditions of Approval.

The Variance upon the submittal of an application for a building permit and/or Certificate of Use and Occupancy is approved subject to the following conditions:

(1) That a site plan be submitted to and meet with the approval of the Town of Miami Lakes; said plan to include among other things, but not be limited thereto, the location of structure or structures; display area; types, sizes and location of signs; light standards; off-street parking areas; exits and entrances; drainage; walls; fences; landscaping, etc.

(2) That in the approval of the plan, the same be substantially in accordance with the composite plans submitted for the hearing. Said plans consist of the following:

(a) A site plan, entitled, "Carmax," prepared by Kimley-Horn and Assoc., Inc., and dated revised 1/02/03;

(b) Floor elevation plans, entitled "Carmax the Auto Super Store," prepared by Pieper, O'Brien, Hern, Architects, consisting of 2 sheets, dated stamped received on November 1, 2002;

(c) A landscape plan entitled, "Landscape Development Plan," as prepared by Hughes, Good, O'Leary & Ryan dated revised 10/22/02; and

(d) A lighting analysis entitled, "Carmax #7198," as prepared by Jim Eads, consisting of 1 sheet dated 10/25/02.

Said plans may be modified at public hearing.

(3) That the use be established and maintained in accordance with the approved plans.

(4) That prior to the issuance of a building permit, the Applicant shall submit to the Town of Miami Lakes for its review and approval a landscaping plan which indicates the type and size of plant material and landscaping to be installed prior to the issuance of a Certificate of Use and Occupancy.

(5) That all repairs and paint work be confined within an approved type structure for this type of work. Plans and specifications for such work are to be approved by the Town of Miami Lakes.

(6) That no stringer lights, pennants, mobile or stationary visual devices, except as permitted under point of sale regulations, shall be used or displayed.

(7) That the Applicant obtain a Certificate of Use and Occupancy from the Town of Miami Lakes, upon compliance with all terms and conditions, the same subject to cancellation upon violation of any of the conditions pursuant to applicable procedures established by the Town Code.

(8) That the Applicant comply with all applicable conditions and requirements of the Department of Environmental Resources Management (DERM) as contained in its memorandum dated December 3, 2002 regarding this application.

(9) That the Applicant comply with all applicable conditions and requirements of the Public Works Department as contained in its memorandum dated February 25, 2003 pertaining to this application, with the exception of those comments regarding the minimum depth and back out parking space requirements.

(10) That a continuous 7 foot wide greenbelt, penetrated only at approved points for ingress and egress to the Property, shall be provided along all rights-of-way or properties zoned residential. Said 7 foot wide greenbelt shall be extensively landscaped.

(11) That outdoor lights for the off-street parking areas and/or vehicle storage areas shall be no higher than 20 feet above grade along the western edge of the Property and no higher than 25 feet anywhere else on the Property.

(12) That the use of outdoor loudspeakers shall be prohibited.

(13) That weekend promotions in connection with radio/television stations which use electronically generated or amplified sound shall be prohibited.

(14) That no repair work be permitted on vehicles located in the automobile, truck, etc. display area, and the proposed outside maintenance area may be used only for washing, waxing and storage of vehicles.

(15) That all parking spaces required for customer and employee parking be so marked and such parking spaces shall not be utilized for the display or storage of automobiles, trucks, etc.

(16) The Applicant shall provide a 6 foot painted masonry wall around the areas designated for service and car wash on the plans submitted.

(17) There shall be no parking in the rights of way, or on any of the frontage roads.

(18) The use of aircraft lights, strobe lights, or any other type of moving lights shall be prohibited.

(19) That the Applicant shall provide a recordable instrument to the Town attorney for review and approval prior to the issuance of a building permit that provides for the following:

(a) The Applicant, its successors, or assigns shall provide plans for the construction of a level berm of uniform height between the Vacant Parcel and adjacent residences, said berm to be at least as high as the berm presently existing on the western border of the Vacant Parcel.

(b) The Applicant, its successors, or assigns shall construct and maintain the berm in conformance with the Code's requirements.

(c) The Applicant, its successors, or assigns shall maintain the Vacant Parcel in a clean and orderly fashion in conformance with the Code's requirements.

(20) Upon review and approval of the foregoing instrument by the Town Attorney, the Applicant shall record the instrument in the public records of Miami-Dade County at its own cost and expense.

Section 5. Effective Date.

This resolution shall become effective immediately upon its adoption.

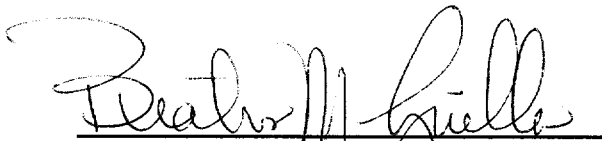
Section 6. Appeal.

In accordance with Section 33-312 and 33-316 of the Town Code, the Applicant, or any aggrieved property owner in the area, may appeal the decision of the Town Council by filing a notice of appeal in accordance with the Florida Rules of Appellate Procedure.

PASSED AND ADOPTED this 10th day of April 2003.


WAYNE SLATON, MAYOR

ATTEST:


BEATRIS M. ARGUELLES, CMC
TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:


WEISS, SEROTA, HELFMAN, PASTORIZA & GUEDES, P.A.
TOWN ATTORNEY

EXHIBIT "A"

CAR MAS PARCEL: The east 410.00 feet of Tracts B, C and D of "Miami Lakes Business Park North" according to the Plat thereof as recorded in Plat Book 149 at Page 20 of the Public Records of Miami Dade County Florida. Said parcel of land containing 9.83 acres more or less.

**MIAMI-DADE COUNTY DEPARTMENT OF PLANNING AND ZONING
RECOMMENDATION TO THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES**

APPLICANT: The Craig Collection, Inc.

PH: Z02-317

SECTION: 13-52-40

DATE: April 10, 2003

COMMISSION DISTRICT: 13

ITEM NO.: A

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A. INTRODUCTION

o **REQUEST:**

Non-use variance of zoning regulations to permit an auto dealership with a repair/service bay area of 26% of the gross building area (a maximum of 15% allowed).

A plan is on file and may be examined in the Zoning Department entitled "Carmax," as prepared by Kimley-Horn and Assoc., Inc., consisting of a site plan, dated revised 1/02/03 and floor & elevation plans entitled "Carmax The Auto Super Store," as prepared by Pieper, O'Brien, Hern, Architects, consisting of 2 sheets and dated 2002, a "Landscape Development Plan," as prepared by Hughes, Good, O'Leary & Ryan, dated revised 10/22/02 and a lighting analysis entitled "Carmax #7198," as prepared by Jim Eads, consisting of 1 sheet dated 10/25/02. Plans may be modified at public hearing.

o **SUMMARY OF REQUESTS:**

The request will allow the applicant to construct an auto dealership with a repair/service bay area which would be larger than permitted by Code.

o **LOCATION:**

Lying south of N.W. 167 Street and west of theoretical N.W. 63 Avenue, Miami Lakes, Florida.

o **SIZE:** 6.68 acres.

o **IMPACT:**

The approval of the requested non-use variance will permit the currently vacant subject property to be developed commercially in accordance with the submitted plans. Said development will bring additional traffic and noise into the area, as well as additional shopping and employment opportunities.

B. ZONING HISTORY:

The Board of County Commissioners approved Resolution Z-216-91 in 1991 which rezoned the property from AU, Agricultural District and IU-C, Industrial District, Conditional to IU-C and also approved with conditions non-use variances of zoning and subdivision regulations requiring lots to front on a public street; to waive same to permit six (6) proposed building sites with 0' frontage (150' required) and to permit access to a public street by means of a private drive easement.

C. COMPREHENSIVE DEVELOPMENT MASTER PLAN (CDMP):

1. The Adopted 2005 and 2015 Land Use Plan designates the subject property as being within the Urban Development Boundary for **business and office**.
2. Some existing lawful uses and zoning are not specifically depicted on the LUP map. However, all such existing lawful uses and zoning are deemed to be consistent with this Plan as provided in the section of this chapter titled "Concepts and Limitations of the Land Use Plan Map." (Land Use Element, page I-36).

D. NEIGHBORHOOD CHARACTERISTICS:

<u>ZONING</u>	<u>LAND USE PLAN DESIGNATION</u>
<u>Subject Property:</u>	
IU-C; vacant and lake	Business and Office
<u>Surrounding Properties:</u>	
NORTH: Palmetto Expressway	Expressway
SOUTH: Lake	Water
EAST: IU-C; automobile dealership	Business and Office
WEST: IU-C; vacant parcel	Business and Office

The subject parcel is located on the south side of the Palmetto Expressway, west of theoretical NW 63 Avenue. An automobile dealership is located to the east, a lake is to the south, and vacant industrially zoned property is located to the west. A townhouse development is located further to the west, within the RU-TH, Townhouse District.

E. SITE AND BUILDINGS:

Site Plan Review:

Scale/Utilization of Site:	Unacceptable
Location of Buildings:	Acceptable
Compatibility:	Unacceptable

Landscape Treatment:	N/A
Open Space:	Acceptable
Buffering:	Acceptable
Access:	Acceptable
Parking Layout/Circulation:	Acceptable
Visibility/Visual Screening:	Acceptable
Energy Considerations:	N/A
Roof Installations:	N/A
Service Areas:	Unacceptable
Signage:	N/A
Urban Design:	N/A

F. PERTINENT REQUIREMENTS/STANDARDS:

Upon appeal or direct application in specific cases, the Town Council shall hear and grant applications for **non-use variances** from the terms of the zoning and subdivision regulations and may grant a non-use variance upon a showing by the applicant that the non-use variance maintains the basic intent and purpose of the zoning, subdivision and other land use regulations, which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community and provided that the non-use variance will be otherwise compatible with the surrounding land uses and would not be detrimental to the community. No showing of unnecessary hardship to the land is required.

G. NEIGHBORHOOD SERVICES:

DERM	No objection
Public Works	Objects
Parks	No objection
MDTA	No objection
Fire Rescue	No objection
Police	No objection
Schools	No comment

H. ANALYSIS:

This recommendation is being issued by the Miami-Dade County Department of Planning and Zoning acting as staff to the Town of Miami Lakes. In this capacity staff notes that the Third District Court of Appeals has held invalid for Miami-Dade County, the Miami-Dade County zoning standards for non-use variances, special exceptions, unusual uses, new uses requiring a public hearing, and modifications of conditions and covenants. The Miami-Dade County Attorney's Office is seeking a review of the decision in the Florida Supreme Court. While the case is pending, the decision is presently in effect and binding on all parties in the unincorporated portions of the county. Its impact has been to suspend consideration of zoning applications in the unincorporated portions of the county for most special exceptions, unusual uses, non-use variances, and modification of conditions and covenants until the decision is modified or reversed or modified standards are enacted. The Town of Miami Lakes has zoning standards similar to those struck down by the Third District Court of Appeals but has decided to allow hearings under these standards to go

forward. The Miami-Dade County Department of Planning and Zoning recognizes the binding effect of the court decision on all Miami-Dade County decisions but in rendering this recommendation makes no comment as to its legal impact on the zoning decisions of the Town of Miami Lakes. The recommendation is addressed only to the land use impacts of the application.

The Department of Environmental Resources (DERM) has stated that this application meets the minimum requirements of Chapter 24 of the Code and **DERM has no objections** to this application. The **Public Works Department objects** to this application. While this application meets traffic concurrency because the subject property is located within the urban infill area where traffic concurrency does not apply, the parking spaces must be redesigned to provide a minimum depth of 18' and a back-out of 22'.

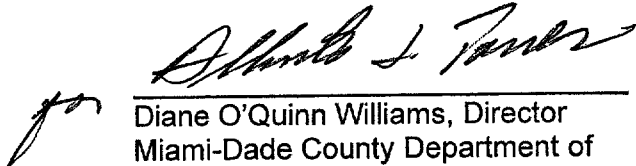
This application seeks a non-use variance of Section 33-259(6.1) of the Code to permit an auto dealership with a repair/service area of 26% of the gross building area (a maximum of 15% allowed). The submitted plans show the 6.68 acre site to be developed with a proposed auto dealership. The proposed 19,278 square foot building on the site will include 4,986.44 square feet of repair/service bay areas, which equals 26% of the gross building area where a maximum of 15% is allowed by Code.

While staff recognizes that certain uses permitted under the IU-C zoning category might create a greater negative impact on the surrounding area than the proposed automobile dealership would, it is nevertheless a concern of zoning that such negative impacts be limited, as demonstrated by the Zoning Code requirement that no more than 15% of the total gross building area of an automobile and truck sales business be devoted to repair/service bays. Inasmuch as the subject property is vacant, and the proposed building is new development, staff is of the opinion that the applicant should construct the proposed auto dealership in compliance with the requirements of the Zoning Code. Staff notes that the existing auto dealership which abuts the subject property to the east was developed without a non-use variance for the size of the repair/service bay area and conforms to the 15% maximum requirement.

This application is **consistent** with the Comprehensive Development Master Plan (CDMP) but since the submitted plans do not comply with the Zoning Code and the proposed development would not be built in accordance with the abutting auto dealership to the east, which did not require the type of variance the applicant seeks, this application is deemed **incompatible** with the neighboring area and is not supported by staff.

- I. **RECOMMENDATION:** Denial without prejudice.
- J. **CONDITIONS:** None.

DATE INSPECTED: 02/24/03
DATE TYPED: 02/25/03
DATE REVISED: 03/17/03
DATE FINALIZED: 03/31/03
GEO:DO'QW:AJT:MTF:DBM



Diane O'Quinn Williams, Director
Miami-Dade County Department of
Planning and Zoning

Exhibit B
Vacant Parcel

The West 293.42 feet of Tracts B, C and D of the "Miami Lakes Business Park North" according to the Plat thereof as recorded in Plat Book 149, at Page 20 of the Public Records of Miami-Dade County, Florida; said parcel of land containing 6.98 acres more or less.