

RESOLUTION NO. 04- 252 Z

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, APPROVING A CONDITIONAL USE PURSUANT TO DIVISION 3.3 OF THE TOWN LAND DEVELOPMENT CODE IN ORDER TO WAIVE THE 2,500 FOOT DISTANCE SEPARATION BETWEEN SCHOOLS AND CHURCHES AND AN ESTABLISHMENT THAT SELLS ALCOHOLIC BEVERAGES AT 16403 N.W. 67th AVENUE, MIAMI LAKES, FLORIDA; PROVIDING FINDINGS; PROVIDING CONDITIONS OF APPROVAL; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR APPEAL

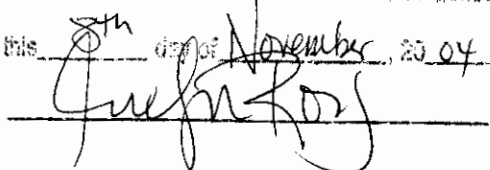
WHEREAS, pursuant to Division 3.3 of the Town of Miami Lakes (the "Town") Land Development Code ("LDC"), Bodegon El Pimiento Corporation (the "Applicant") has applied to the Town for approval of a conditional use to waive Section 33-150(B) of the Town Code, which requires a 2,500 foot distance separation between schools and churches and an establishment that sells alcoholic beverages, in order to permit a use 685 feet from Miami Lakes Middle School and 1,804 feet from Our Lady of the Lakes Catholic Church (the "Conditional Use") for property located at 16403 N.W. 67th Avenue Street (see Exhibit "A" for a legal description); 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, 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 was noticed for Thursday, October 14, 2004 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

I, **Evelyn D. Roig**, being the duly appointed Town Clerk of the Town of Miami Lakes, Florida, by my signature and the official seal, do hereby certify this document to be a true and correct copy of the original contained in the official files of the Town of Miami Lakes.

Signed and Sealed this 8th day of November, 2004



CERTIFIED COPY

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WHEREAS, Town Staff has reviewed the application and recommends approval of the Conditional Use, with conditions, as set forth in the Staff Analysis and Recommendation dated October 1, 2004 (the "Staff Analysis"), attached as Exhibit "B," 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.

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.

Section 3. Approval / Denial.

The Town Council approves the Conditional Use subject to the conditions in Section 4 below.

Section 4. Conditions of Approval.

The Conditional Use is granted subject to the following conditions:



1. No liquor shall be sold or consumed on the premises. Wine may only be consumed within the store or sold in sealed bottles for takeout to be consumed off the property.
2. There shall be no dancing or entertainment other than background music (music that does not interfere with normal conversations) within the premises.
3. 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 the state alcoholic beverage license application can be signed by the Town.
4. The Applicant shall obtain a certificate of use and a Town occupational license within one (1) year of the date of this approval. If a certificate of use and a Town occupational license is not obtained or an extension granted within the prescribed time limit then this approval shall become null and void.

Section 5. Effective Date.

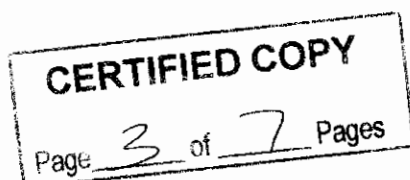
This resolution shall become effective immediately upon its adoption.

Section 6. Appeal.

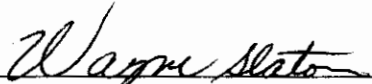
In accordance with Division 3.10 of the Town LDC, the Applicant, or any aggrieved property owner in the area, may appeal the decision of the Town Council by filing of a notice of appeal in accordance with the Florida Rules of Appellate Procedure.

The foregoing Resolution was moved by Collins and Seconded by Vice Mayor Alonso, and upon being put to a vote the motion carried 4-0 with each Council Member voting as follows:

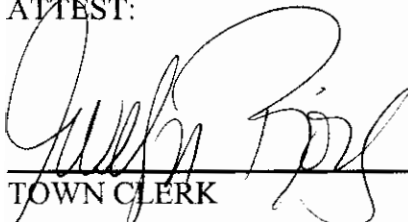
Mayor Wayne Slaton	<u>yes</u>
Vice Mayor Roberto Alonso	<u>yes</u>
Councilmember Mary Collins	<u>yes</u>
Councilmember Robert Meador	<u>not present</u>
Councilmember Michael Pizzi	<u>not present</u>
Councilmember Nancy Simon	<u>not present</u>
Councilmember Peter Thomson	<u>yes</u>




PASSED AND ADOPTED this ^{ew} ~~14~~¹⁵ day of October 2004.


Wayne Slaton
MAYOR

ATTEST:


Deputy Town Clerk
TOWN CLERK

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


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

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EXHIBIT "A"

Legal Description:

Folio # 32-2013-004-2410

Miami Lakes Windmill Gate Section Tract A, Plat Book 103 - Page 41 of the
Public Records of Miami Dade County. FL

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EXHIBIT "B"

Analysis:

Within the same shopping center there are three other businesses that serve alcoholic beverages and are exempted by Code from the distance separation requirement and therefore do not require approval as a special exception (Conditional Use) at a public hearing. Cami's Seafood Restaurant and Ken and Mike's Italian Restaurant are exempted by the code from the distance separation requirement because they are full service restaurants. The existing convenience store does not have to comply with the 2,500' required separation because the code exempts take-out alcoholic beverage sales at grocery stores from the distance separation requirements.

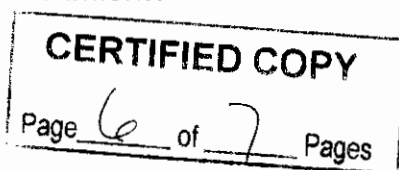
For this section, the code defines a restaurant as an establishment that serves cooked, full course meals prepared daily on the premises. Since Bodegon El Pimiento will only serve Tapas, which are considered appetizers, and will not have a full kitchen, it will not qualify as a restaurant and must conform to the 2,500 ft distance separation.

Although a grocery store is not defined in the Code, the adjoining convenience store is considered a grocery store by a long standing administrative interpretation by the County Planning Director which states that a grocery store is an establishment that sells more than 150 different food items. It is not anticipated that Bodegon El Pimiento will sell more than 150 different food items and therefore will not qualify as a grocery store.

It should be noted that the required distance separations are measured in a straight line and the line in this case crosses over a canal. The actual walking distances to the church and school would be a few hundred feet longer. Also the distance to the school is measured to the play area immediately across the canal and not to the building itself which is more than 1,000 ft farther away.

Knowing that the proposed location did not meet the required distance separation, the applicant could have looked elsewhere for a location; however, there are difficulties in locating this type of business anywhere in Miami Lakes with the distance requirements from schools and churches in the current code.

Miami Lakes was designed in a very innovative manner which combines different uses throughout the Town. Commercial areas are situated throughout the town next to residential uses and in some cases combined into mixed residential and commercial centers. The schools and churches are also conveniently spread out through the Town. The 2,500 ft. required distance separation, which is almost ½ mile, did not contemplate this type of town layout and practically eliminates most existing commercial locations from allowing a business such as the Bodegon El Pimiento.



The 685' requested distance separation from the school complies with state statutes. Chapter 562.45 (2) (a) of the Florida Statutes specifically states: ... "a location for on-premise consumption of alcoholic beverages may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school or secondary school unless the county or municipality approves the location ..."

The proposed use is compatible with the existing uses; with the exception of the distance separation complies with the land development regulations; is consistent with the Comprehensive Plan; will not overburden the existing infrastructure and does not generate any hazardous wastes.

Given the fact that there are three other establishments serving alcoholic beverages in the Windmill Gate Shopping Center, that there is a canal separating the school and church property from the commercial establishment and that the current alcoholic beverage distance separation regulations need to be re-examined, staff recommends approval of the Conditional Use request with conditions.

Recommendation:

Staff recommends approval of the conditional use request to allow alcoholic beverage sales on the subject property within 2,500' of a school and church with the following conditions:

1. No liquor shall be sold or consumed on the premises. Wine may only be consumed within the store or sold in sealed bottles for takeout to be consumed off the property.
2. There shall be no dancing or entertainment other than background music (music that does not interfere with normal conversations) within the premises.
3. 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 the Town grants approval of the alcoholic beverage license.
4. The applicant shall obtain a certificate of use and a Town occupational license within one year of the date of this approval. If a certificate of use and a Town occupational license is not obtained or an extension granted within the prescribed time limit then this approval shall become null and void.

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