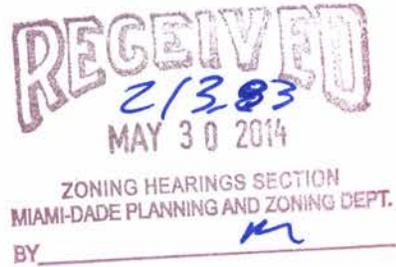


Ryan D. Bailline  
Tel 305.579.0508  
Fax 305.579.0717  
bailliner@gtlaw.com

May 30, 2014



**VIA HAND DELIVERY**

Mr. Nathan Kogon, Director  
Development Services Division  
Miami-Dade County Regulatory and  
Economic Resources Department  
111 NW 1 Street, 11<sup>th</sup> Floor  
Miami, Florida 33128-1972

**Re: Appeal of Resolution No. CZAB 11-4-14 for Three Lakes  
Residences Public Hearing Application Z2013-00083 (the  
“Application”)**

Dear Nathan:

This firm represents The Richman Group of Florida, Inc. (“Richman”) in connection with land use, zoning, and general development matters relating to the above-captioned Application. On May 13, 2014, Community Zoning Appeals Board No. 11 (the “CZAB”) denied the Application without prejudice. Pursuant to Miami-Dade County Code Sec. 33-312-316, please accept this letter, together with the enclosed materials, appealing the decision rendered at Public Hearing Z13-083.

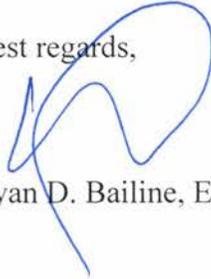
The decision rendered at Public Hearing Z13-083 was not: (i) based on competent substantial evidence; (ii) testimony proffered by Richman’s qualified and credentialed experts; or (iii) written analytical evidence and factual findings made by staff. In compliance with the “Instructions for Filing an Appeal,” enclosed please find the following:

1. Petition of Appeal from Decision of Miami-Dade CZAB, executed by Tamiami Kendall Investments, Inc., Owner and Applicant;
2. A check made payable to Miami-Dade County in the amount of \$2161.77;
3. A copy of the Staff Recommendation of Approval;
4. A copy of Resolution No. CZAB 11-4-14; and
5. A copy of Miami-Dade County Code Sec. 33-312-316.

Mr. Nathan Kogon, Director  
May 30, 2014

Should you have any questions or require additional information, please do not hesitate to contact us. We would appreciate your scheduling this item on the next available Board of County Commissioners' agenda.

Best regards,



Ryan D. Bailine, Esq.

Enclosures

cc: The Richman Group of Florida, Inc.  
Mr. Todd Fabbri  
Mr. Jeffery Evans  
Linda Christian-Cruz, FRP  
Marissa A. Faerber, Esq.





APPELLANT MUST SIGN THIS PAGE

Date: 21<sup>st</sup> day of May, year: 2014

Signed *Raquel Carro*  
\_\_\_\_\_  
Raquel Carro, President

\_\_\_\_\_  
Print Name  
Tamiami Kendall Investments, Inc.  
267 Minorca Avenue, Coral Gables, FL 33134  
\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Phone Fax

REPRESENTATIVE'S AFFIDAVIT

If you are filing as representative of an association or other entity, so indicate:

Representing

Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Telephone Number

Subscribed and Sworn to before me on the 27<sup>th</sup> day of May, year 2014

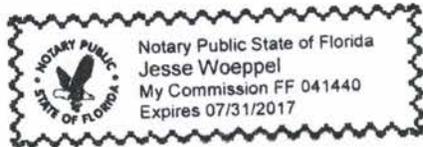
*Judith*  
\_\_\_\_\_  
Notary Public

(stamp/seal)

Commission expires: 07/31/2017



ZONING HEARINGS SECTION  
MIAMI-DADE PLANNING AND ZONING DEPT.  
BY *AH*



APPELLANT'S AFFIDAVIT OF STANDING  
(must be signed by each Appellant)

STATE OF Florida

COUNTY OF Miami-Dade

Raquel Carro, President of  
Tamiami Kendall Investments, Inc.

Before me the undersigned authority, personally appeared \_\_\_\_\_  
(Appellant) who was sworn and says that the Appellant has standing to file the attached appeal  
of a Community Zoning Appeals Board decision.

The Appellant further states that they have standing by virtue of being of record in Community  
Zoning Appeals Board matter because of the following:

(Check all that apply)

- 1. Participation at the hearing
- 2. Original Applicant
- 3. Written objection, waiver or consent

RECEIVED  
213-083  
MAY 30 2014

ZONING HEARINGS SECTION  
MIAMI-DADE PLANNING AND ZONING DEPT.

BY [Signature]

Appellant further states they understand the meaning of an oath and the penalties for perjury,  
and that under penalties of perjury, Affiant declares that the facts stated herein are true.

Further Appellant says not.

Witnesses:

[Signature]  
Signature

[Signature]  
Appellant's signature

Signature

Appellant's signature

Joseph CARRO  
Print Name

Raquel Carro  
Print Name

[Signature]  
Signature

ALBERTO J. PARLADE  
Print Name

Print Name

Sworn to and subscribed before me on the 21<sup>st</sup> day of MAY, year 2014.

Appellant is personally know to me or has produced N/A as  
identification. ==



[Signature]  
Notary  
(Stamp/Seal)

Commission Expires:  
[b:forms/affidapl.sam(9/08)]



- (6) NON-USE VARIANCE to permit two carport buildings to setback 69'-5" (75' required) from the front (south) property line and to be located in front of the principal building (not permitted).
- (7) NON-USE VARIANCE to permit a clubhouse to be located in front of the principal building (not permitted).
- (8) NON-USE VARIANCE to permit one-way drives with a minimum width of 11' (14' required).

The aforementioned plans are on file and may be examined in the Department of Regulatory and Economic Resources. Plans may be modified at public hearing.

SUBJECT PROPERTY: A portion of Southeast ¼ of Section 14, Township 55 South, Range 39 East. Lying and being in Miami-Dade County, Florida, being more particularly described as follows:

Begin at southeast corner of the southeast ¼ of said Section 14 thence south 87° 47' 05" west along the south line of the southeast ¼ of said Section 14 for 525.83 feet; thence north 02° 20' 51" west 914.91 feet; thence north 87° 39' 09" east along a line 448.00 feet south of and parallel with the north line of the southeast ¼ of the southeast ¼ of said Section 14; for 530.00 feet to east line of the southeast ¼ of said Section 14; thence south 02° 05' 10" east along said east line 916.13 feet to the point of beginning.

LOCATION: Lying North of SW 136 Street & West of SW 127 Avenue, MIAMI-DADE COUNTY, FLORIDA, and

*WHEREAS*, a public hearing of the Miami-Dade County Community Zoning Appeals Board 11 was advertised and held, as required by law, and all interested parties concerned in the matter were given an opportunity to be heard, and at which time the applicant proffered a declaration of restrictions which among other things provided for the following:

- (1) Controlling Site Plan. The Three Lakes Project shall be developed substantially in accordance with the plans entitled "Three Lakes For: The Richman Group of Florida, Inc." as prepared by MSA Architects, consisting of 17 sheets and landscape plans entitled "Three Lakes" as prepared by Bruce Howard & Associates, Inc., consisting of 2 sheets, all sheets dated stamped received 01/29/14 for a total of 19 sheets.
- (2) Residential Density Restriction. The maximum number of dwelling units on the Three Lakes Project shall be a total of 240 multi-family residential units.

*WHEREAS*, upon due and proper consideration having been given to the matter, it is the opinion of this Board that the requested district boundary change to RU-4 (Item #1) would not be

compatible with the neighborhood and area concerned and would be in conflict with the principle and intent of the plan for the development of Miami-Dade County, Florida, and should be denied, and that the requested modification of Paragraph #1 and #2 of Declaration of Restrictions recorded in Official Record Book 24909 Pages 1820-1825 (Item #2) would not be compatible with the area and its development and would not conform with the requirements and intent of the Zoning Procedure Ordinance, and that the requested deletion of Declaration of Restrictions, recorded in Official Records Book 21213, Pages 3152-3168, only as it applies to the subject property (Item #3), and the requested non-use variance to permit a multi-family development with 370 parking spaces (Item #4), and the requested non-use variance to permit spacing between building walls of living units spaced a minimum of 22' (Item #5), and the requested non-use variance to permit two carport buildings to setback 69'-5" from the front (south) property line and to be located in front of the principal building (Item #6), and the requested non-use variance to permit a clubhouse to be located in front of the principal building (Item #7), and the requested non-use variance to permit one-way drives with a minimum width of 11' (Item #8) would not be in harmony with the general purpose and intent of the regulations and would not conform with the requirements and intent of the Zoning Procedure Ordinance and would be inconsistent with the Comprehensive Development Master Plan, and

*WHEREAS*, a motion to deny the application without prejudice was offered by Jay Reichbaum, seconded by Carolina Blanco, and upon a poll of the members present the vote was as follows:

Carolina Blanco	aye	Miguel A. Diaz	absent
Socrates De Jesus	aye	Jay Reichbaum	aye
		Beatrice Suarez	absent
	Patricia G. Davis		nay

*NOW THEREFORE BE IT RESOLVED* by the Miami-Dade County Community Zoning Appeals Board 11, that the requested district boundary change to RU-4 (Item #1) be and the same is hereby denied without prejudice.

*BE IT FURTHER RESOLVED* that the requested modification of Paragraph #1 and #2 of Declaration of Restrictions recorded in Official Record Book 24909 Pages 1820-1825 (Item #2), and the requested deletion of Declaration of Restrictions, recorded in Official Records Book 21213, Pages 3152-3168, only as it applies to the subject property (Item #3), and the requested non-use variance to permit a multi-family development with 370 parking spaces (Item #4), and the requested non-use variance to permit spacing between building walls of living units spaced a minimum of 22' (Item #5), and the requested non-use variance to permit two carport buildings to setback 69'-5" from the front (south) property line and to be located in front of the principal building (Item #6), and the requested non-use variance to permit a clubhouse to be located in front of the principal building (Item #7), and the requested non-use variance to permit one-way drives with a minimum width of 11' (Item #8) be and the same are hereby denied without prejudice.

The Director is hereby authorized to make the necessary notations upon the records of the Miami-Dade County Department of Regulatory and Economic Resources.

*PASSED AND ADOPTED* this 13<sup>th</sup> day of May, 2014.

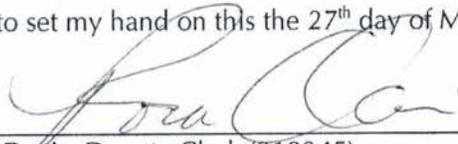
Hearing No. 14-5-CZ11-1  
rd

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

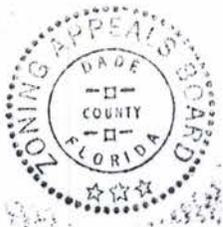
I, Rosa Davis, as Deputy Clerk for the Miami-Dade County Department of Regulatory and Economic Resources as designated by the Director of the Miami-Dade County Department of Department of Regulatory and Economic Resources and Ex-Officio Secretary of the Miami-Dade County Community Zoning Appeals Board 11, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of Resolution No. CZAB11-4-14 adopted by said Community Zoning Appeals Board at its meeting held on the 13<sup>th</sup> day of May, 2014.

IN WITNESS WHEREOF, I have hereunto set my hand on this the 27<sup>th</sup> day of May, 2014.



Rosa Davis, Deputy Clerk (218345)  
Miami-Dade Department of Department of Regulatory  
and Economic Resources

SEAL





Associates, Inc., consisting of 2 sheets, all sheets dated stamped received 1/29/13 for a total of 19 sheets."

FROM: "(2) Residential Density Restriction. The maximum number of dwelling units on the Twin Lake Shores East Project shall be a total of 104 town home residential units."

TO: "(2) Residential Density Restriction. The maximum number of dwelling units on the Three Lakes Project shall be a total of 240 multi-family residential units.

The purpose of Request #2 is to allow the applicant to submit a revised site plan showing a multi-family development in lieu of the previously approved town home development and to increase the number of residential units.

- (3) DELETION of declaration of Restrictions, recorded in Official Records Book 21213, Pages 3152-3168, only as it applies to the subject property.
- (4) NON-USE VARIANCE to permit a multi-family development with 370 parking spaces (399 parking spaces required).
- (5) NON-USE VARIANCE to permit spacing between building wall of living units spaced a minimum 24' (30' required) and to permit spacing varying from 13'-5" to 18'-4" (20' required) from other buildings.
- (6) NON-USE VARIANCE to permit two carport buildings to setback 69'-5" (75' required) from the front (south) property line and to be located in front of the principal building (not permitted).
- (7) NON-USE VARIANCE to permit a club house to be located in front of the principal building (not permitted).
- (8) NON-USE VARIANCE to permit one-way drives with a minimum width of 11' (14' required).

The aforementioned plans are on file and may be examined in the Department of Regulatory and Economic Resources. Plans may be modified at public hearing.

#### **PROJECT DESCRIPTION AND PROJECT HISTORY:**

The submitted plans depict the proposed 240 unit, multi-family garden style residential development consisting of the eight (8), three (3)-story apartment buildings, four (4) 1-story carport buildings, a clubhouse and surface parking areas on the approximately 9.8-acre parcel.

Pursuant to Resolution #CZAB11-30-06, 8.3 acres of the 9.8-acre subject parcel was rezoned from BU-1A, Limited Business District, to RU-3M, Minimum Apartment House District, along with ancillary requests for variances in 2006, in order to allow the establishment of a residential development on the property. Declarations of Restrictions were also approved restricting the development to the approved use and site plans, which the applicant now seeks to modify and delete.

<b>NEIGHBORHOOD CHARACTERISTICS</b>		
	<b>Zoning and Existing Use</b>	<b>Land Use Designation</b>
<b>Subject Property</b>	BU-1A and RU-3M; vacant land	Industrial and Office
<b>North</b>	RU-3M; townhome development	Industrial and Office
<b>South</b>	RU-TH; townhome development	Low-Density Residential, (2.5 - 6 du/a)
<b>East</b>	GU; vacant land	Industrial and Office
<b>West</b>	RU-3M; townhome development	Industrial and Office

**NEIGHBORHOOD COMPATIBILITY:**

The subject property is a vacant parcel located in South Miami-Dade County. Vacant land and townhouses characterize the surrounding area.

**SUMMARY OF THE IMPACTS:**

The approval of this application will allow the applicant to develop the parcel in accordance with the proposed RU-4, Apartment House District regulations and provide the community with additional multi-family residences in this area. However, since the site is vacant the proposed development of the residential site could impact traffic and other services in the area including schools and emergency services.

**COMPREHENSIVE DEVELOPMENT MASTER PLAN ANALYSIS:**

The applicant is seeking to allow a zone change to RU-4, Apartment House District, modify a Declaration of Restrictions and delete another Declaration of Restrictions in order to develop the parcel with a multi-family residential development. The Comprehensive Development Master Plan (CDMP) designates this property for **Industrial and Office** use on the Land Use Plan (LUP) Map of the CDMP. The CDMP Land Use Element Interpretative Text states that *residential development is incompatible with major industrial concentrations and shall not occur in areas designated as "Industrial and Office" on the LUP map to avoid use conflicts and for health and safety and residential planning reasons.* However, said text allows exceptions, one of which is that residential development may be granted for a portion of an industrially designated area where the portion is 10 acres or smaller and is bounded on two or more sides by existing residential development or zoning. The subject property is less than 10 acres in size, is bounded by an existing RU-3M zoned townhouse development to the north and west and an existing RU-TH zoned townhouse development to the south. Additionally, staff notes that the Industrial and Office designation does not specify a density range regarding the maximum number of residential units allowed. However, it does provide that the Director of the Department of Regulatory and Economic Resources may determine that the inclusion of residences that are designed to provide a compatible transition is the best means to maintain the quality of the adjoining residential areas in the industrial designated area. The submitted plans with the density requested by the applicant of 25 units per net acre, in staff's opinion, provides a compatible transition to the adjacent residential development to the west and north, and therefore, the proposed development as presented is **consistent** with the CDMP Industrial and Office designation of the subject property on the LUP Map. Staff notes that the applicant

has proffered a covenant restricting the development of the site to the submitted plans, which show a proposed 240 unit, multi-family garden style residential development consisting of the eight (8), three (3)-story apartment buildings, four (4) carport 1-story buildings and a variety of amenities, including a recreational club house, a swimming pool, cabanas, outdoor living areas, and a large green space that will serve in part as a "tot lot".

The criteria for determining compatibility is outlined in CDMP Land Use Element, **Policy LU-4A**, among which are noise, lighting, height, bulk, scale of architectural elements, landscaping and buffering as applicable. Staff notes that the subject property abuts an existing two-story townhouse development located to the north, south and west of the subject property. The submitted plans indicate that the proposed development will meet the setback requirements and will be adequately buffered on all sides by a continuous hedge and a staggered row of trees, which staff opines will mitigate the visual impact of the proposed three (3)-story development on the abutting properties. Additionally, in staff's opinion, the proposed maximum height of 28'-6" on the three (3)-story buildings shown in the plans is compatible with the maximum height (35') allowed by the surrounding existing zoning districts.

Based on the foregoing analysis, staff opines that the proposed development will be adequately buffered and will not have a negative visual impact on the surrounding properties or on passersby along SW 127 Avenue and SW 136 Terrace and would be **compatible** with the area based on the criteria set forth in the CDMP Land Use Element, **Policy LU-4A**. Therefore, subject to the acceptance of the proffered covenant, staff opines that approval of the application would be **consistent** with the CDMP Land Use Element interpretative text, which allows under certain conditions the approval of residential uses in areas designated **Industrial and Office** on the CDMP Land Use Plan (LUP) map.

#### **ZONING ANALYSIS:**

For the reasons stated above, staff opines that when the applicant's request to rezone the 9.8-acre parcel to RU-4 (request #1), is analyzed under Section 33-311, District Boundary Change, that the approval of the request would be **compatible** with the surrounding residential, uses in the area.

Staff notes that most of the subject property was previously approved to allow a residential development in 2006, pursuant to Resolution #CZAB11-30-06. The applicant now seeks to rezone the entire property to residential use in order to develop it with a 240 apartment units. The submitted site plan indicates that the majority of the three-story buildings will be placed away from property lines and streets (SW 136 Street and SW 127 Avenue). Also included in the site plan is a club house which will include indoor amenities and recreation space. One courtyard contains a swimming pool, cabanas and outdoor living areas. A green space/tot lot is shown in another courtyard. These courtyards are connected internally to the subject property and will be accessible to all residents. The arrangement of buildings away from the roadway and the integration of architecturally defined open space is much more pedestrian-friendly than conventional developments. Pedestrian paths and sidewalks are also provided throughout the site to connect to the aforementioned recreational areas. The proposed height of the residential buildings will be three (3) stories high with a maximum height of 28'-6" to the top of roof. These heights assure compatibility between the proposed architecture and the surrounding 2-story townhouses to the south, north and west. The abundant fenestration applied to all facades precludes the formation of a "blank wall" condition on building walls. Landscaping plans show an assortment of plant species consisting of trees, palms and shrubs that will be used to shade

parking areas and enhance the aesthetics of the development. As such, staff opines that approval of the rezoning to RU-4 (request #1), would permit residential uses that would not be out of character with, and would be more compatible with the existing residential developments located to the south, west and north of the subject property.

Staff notes that based on the memorandum from the Public Works and Waste Management Department, the approval of the aforementioned request would not result in excessive traffic. Their memorandum states that the application meets the criteria for traffic concurrency for an Initial Development Order. The memorandum from the Division of Environmental Resources Management (DERM) of the Department of Regulatory and Economic Resources (RER) indicates that the approval with conditions of the aforementioned requests will not have an unfavorable impact on the environmental resources of the County. Specifically, its memorandum indicates that a review of the application for compliance with the requirements of Chapter 24 of the Code indicated that the Level of Service standards as specified in the CDMP for potable water supply, wastewater disposal and flood protection are valid for this initial development order. The Miami-Dade Fire Rescue Department (MDFRD) memorandum indicates that approval of the aforementioned request will have a moderate impact on the MDFRD resources that exists or that are budgeted or planned for in this area.

In addition, staff notes that the subject property fronts SW 127 Avenue and SW 136 Street, which are both section line roadways. As such, based on the foregoing analysis and the memoranda from the Departments concerned, staff opines that the approval of the proposed development will be consistent with the CDMP, will not have an unfavorable impact on the economy of the County and would not have an unfavorable impact on the environmental and natural resources or create an unnecessary burden on the water, sewer, solid waste or recreational resources among others which have been constructed, planned or budgeted for. **Therefore, subject to the acceptance of the covenant, staff recommends approval of request #1 under Section 33-311, District Boundary Change.**

The applicant also seeks approval to modify paragraphs of a previously recorded declaration of restrictions (request #2) and to delete another declaration of restrictions (request #3) in order to remove a requirement that the property be developed in accordance with a site plan for a residential development and commercial site and to allow the applicant to submit a revised site plan showing a multi-family development in lieu of the previously approved uses. When the requests are analyzed under Section 33-311(A)(7), Generalized Modification Standards, staff opines that approval of same would be **compatible** with the residential uses in the surrounding area. The previously approved plan being modified showed a residential development with 104 townhome units housed in 15 separate buildings with a maximum height of 33'. Staff notes that the current site plans show a proposed 240 unit, multi-family garden style residential development consisting of the eight (8), three (3)-story apartment buildings, four (4) 1-story carport buildings and a variety of amenities, including a recreational club house, a swimming pool, cabanas, outdoor living areas, and a large green space that will serve in part as a "tot lot". Additionally, the Declaration of Restrictions that the applicant is requesting to delete required, among other things, that the commercial development be approved through the Administrative Site Plan Review process, limited the commercial uses allowed and required a 25' landscape buffer. Staff notes that the proposed site plan shows a 25' landscape buffer along the east and south property lines adjacent to SW 127 Avenue and SW 136 Street. Staff further notes that the main difference between the previously approved plan and the proposed site plan is the mixed-use commercial and residential uses previously approved and the residential use only now proposed. Staff opines that the submitted plans do not indicate an increase in the intensity of

the development that will have visual or traffic impacts on the surrounding area. Staff notes that based on the memorandum from the Public Works and Waste Management Department, the approval of the aforementioned request would efficiently use the roads, streets and highways which have been constructed, planned or budgeted for in this area and further, would not result in excessive traffic. **Therefore, based on the aforementioned analysis staff recommends approval with conditions of requests #2 and #3 under Section 33-311(A)(7) Generalized Modification Standards.**

When requests #4 through #8 are analyzed under Section 33-311(A)(4)(b), Non-Use Variance From Other Than Airport Standards, staff opines that approval of these requests would be **compatible** with the surrounding area. The applicant seeks to develop the residential development with 29 less parking spaces than the 399 parking spaces required by the RU-4 zoning regulations (request #4). Staff notes that the submitted plans show an additional 36 parking spaces located within detached carport buildings for a total of 406 parking spaces within the proposed development. However, the RU-4 zoning district regulations do not allow the use of these spaces in calculating the total available parking spaces for the proposed residential development. Staff's parking calculation only included the parking spaces marked on the site plan, resulting in the shortage that is the subject of request #4. Staff is supportive of the applicant's request to reduce the number of on-site parking spaces since this request is internal to the site and the likelihood of the spillage of parking onto the abutting roadways is very minimal. However, as a condition for approval, staff recommends that the aforementioned carports not be enclosed in any manner for habitable space and remain for the parking of vehicles only. Additionally, staff is also supportive of request #8, to permit one-way drives with a minimum width of 11' (14' required). Staff notes that said request is located at the southwestern portion of the subject site at a proposed turnabout. One of the drives with a width of 11' cuts through the middle of the proposed turnabout, while another drive with a width of 12' caresses said turnabout and provides a means for vehicles to exit the site. Staff further notes that there are other drives within this area of the site that allow for vehicular flow without any traffic disturbance. Therefore, staff opines that approval of this request (request #8) to permit one-way drives with a minimum width of 11' would not be detrimental to the area and would not have a negative traffic impact.

Staff is also supportive of requests #5 through #7, which seek to permit reduced spacing between buildings (request #5), reduced setbacks for the carport buildings (request #6), and permit said carport buildings and clubhouse to be located in front of the principal buildings (request #7). Staff opines that these requests are minimal, internal to the site and are not likely to have a visual impact on the surrounding area. Additionally, staff notes that in order to mitigate any negative visual impacts generated by these requests the applicant has submitted landscape plans which indicate extensive landscaping so as to lessen said impact that the development could have on the adjacent properties and to provide a pleasing environment for the residents. Staff, therefore, opines that the approval of these requests would maintain 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 variances will be otherwise compatible with the surrounding land uses and would not be detrimental to the community. **As such, staff recommends approval with conditions of requests #4 through #8 under Section 33-311(A)(4)(b), Non-Use Variance From Other Than Airport Standards.**

**ACCESS, CIRCULATION AND PARKING:** The submitted plans indicate one (1) ingress/egress point along SW 136 Street and one (1) egress point on the northwestern portion

of the site along SW 136 Street, too. Additionally, there is another egress point on the eastern portion of the site along SW 127 Avenue. The applicant has provided a total of 406 parking spaces. The applicant has also provided adequate drives to facilitate the flow of traffic within the proposed development.

**NEIGHBORHOOD SERVICES PROVIDER COMMENTS:** See attached.

**OTHER:** N/A

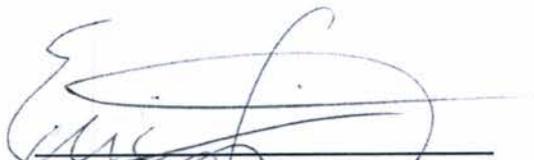
**RECOMMENDATION:**

**Approval of request #1, subject to the acceptance of the proffered covenant, and approval with conditions of requests #2 through #8.**

**CONDITIONS FOR APPROVAL:** For requests #4 through #8 only.

1. That all other paragraphs of Declaration of Restrictions, recorded in Official Records Book 24909 Pages 1820-1825 remain in full force and effect except as herein modified.
2. That the carports not be enclosed in any manner for habitable space and remain for the parking of vehicles only.
3. That the applicant shall install all the required landscaping along the property lines prior to obtaining a Certificate of Occupancy.

ES:MW:NN:CH:JV

  
Eric Silva, AICP, Development Coordinator *NDN*  
Development Services Division  
Miami-Dade County  
Department of Regulatory and Economic Resources



reversal is a failure to provide notice as required by Section 33-310, the name of the appellant need not appear in the record.

(C) If the decision of the Community Zoning Appeals Board has not been appealed within the fourteen-day period, the Director may appeal such decision within four (4) additional days in the manner aforesaid, except that a fee will not be required.

(D) Upon the taking of an appeal, the County Commission shall conduct a de novo hearing and shall consider why the decision of the Community Zoning Appeals Board should or should not be sustained or modified. By resolution, the Board shall either affirm, modify or reverse the Community Zoning Appeals Board's decision and such action of the County Commission shall be by a majority vote of all members present except that a two-thirds ( $\frac{2}{3}$ ) vote of all members present shall be required to reverse any Community Zoning Appeals Board decision denying a request for zoning action or to approve any Development of Regional Impact or modifications thereof, substantial deviation determination or related request pursuant to Section 33-314 where a Community Zoning Appeals Board's recommendation is for denial.

(E) No appeal shall be heard or considered until notice has been provided in accordance with the provisions of Section 33-310(c), (d), (e) and (f).

(F) With respect to appeals arising from the Downtown Kendall Urban Center District a two-thirds ( $\frac{2}{3}$ ) vote of all members present shall be required to reverse any Community Zoning Appeals Board decision denying a request for zoning action for a development proposed within the Center or Edge Sub-Districts of the Downtown Kendall Urban Center District. For any application for a development proposed within the Core Sub-District of the Downtown Kendall Urban Center District pursuant to Section 33-311 shall be decided by a majority vote of all members then in office.

(Ord. No. 60-14, 4-19-60; Ord. No. 61-30, § 1, 6-27-61; Ord. No. 62-48, § 1D, 12-4-62; Ord. No. 64-3, § 2, 2-4-64; Ord. No. 64-65, § 5, 12-15-64; Ord. No. 65-11, § 1, 2-16-65; Ord. No. 66-66, § 4, 12-20-66; Ord. No. 74-20, § 6, 4-3-74; Ord. No.

74-40, § 4, 6-4-74; Ord. No. 77-54, § 1, 7-19-77; Ord. No. 78-18, § 1, 3-21-78; Ord. No. 78-52, § 2, 7-18-78; Ord. No. 80-88, § 1, 9-2-80; Ord. No. 87-29, § 1, 5-19-87; Ord. No. 89-129, § 1, 12-19-89; Ord. No. 95-215, § 1, 12-5-95; Ord. No. 96-127, § 35, 9-4-96; Ord. No. 97-16, § 3, 2-25-97; Ord. No. 99-166, § 4, 12-16-99; Ord. No. 00-31, § 2, 2-24-00; Ord. No. 00-100, § 1, 7-25-00; Ord. No. 05-32, § 1, 2-1-05; Ord. No. 13-16, § 9, 2-5-13)

**Sec. 33-313.1. Deletion or modification of covenants or common open spaces or amenities.**

For zoning applications heard by the County Commission, no zoning application (i) to delete or amend a declaration of restrictive covenants that was submitted in connection with a prior zoning application that would result in an increase in the density or intensity of a use or (ii) to delete or modify, in a manner inconsistent with Section 33-310.1(A)(I)(B)(7), a common open space or common use amenity within a residential site plan that was previously approved upon public hearing, shall be approved except upon a two-thirds vote of the members present at the hearing at which the application is decided. It is provided, however, that this section shall not apply to an application to delete or amend a declaration of restrictive covenants or a condition in a resolution, or parts thereof, for a property within an urban center district or urban area district. (Ord. No. 09-73, § 1, 9-1-09; Ord. No. 12-49, § 3, 7-3-12)

**Sec. 33-314. Direct applications and appeals to the County Commission.**

(A) The County Commission shall have jurisdiction to directly hear the following applications:

- (1) Applications for development approval of Developments of Regional Impact ("DRI"), modification thereof or substantial deviation determination or modification thereof, including applications for modifications to restrictive covenants related thereto, after hearing and recommendation by the Community Zoning Appeals Board or Boards having jurisdiction over the area encompassed by the entire Development of Regional Impact. Where an application

substantial deviation determination or for development approval of a DRI, modification thereof or substantial deviation determination also contains a request for any other action under this chapter requiring a public hearing or where there is pending on any property an application of or development approval for a DRI and an application for any other action under this chapter requiring a public hearing (related requests), except applications for essentially built out determinations, all such applications shall be heard in their entirety by the Board of County Commissioners after hearing and recommendation of the Community Zoning Appeals Board or Boards having jurisdiction over the area encompassed by the application or applications. Where an application requests a modification or elimination of a condition or restrictive covenant not constituting a substantial deviation, and where such application does not contain a request for any other action under this chapter requiring a public hearing apart from modifying the DRI development order, then such application shall be heard directly by the Board of County Commissioners after recommendation of the Developmental Impact Committee. Where practicable, all such items shall be acted upon at the same public hearing. Hearings pursuant to this subsection shall be noticed in the same manner as applications filed before the Community Zoning Appeals Boards. The procedural requirements of Section 33-311(F) and 33-311(G) shall apply to hearings held pursuant to this section.

- (2) Any application encompassing property located in more than one Community Zoning Appeals Board as set forth in Section 33-309.
- (3) When as a result of municipal incorporation or annexation, a Community Zoning Appeals Board (CZAB) does not have enough members in office to hear and decide zoning applications, the Board of County Commissioners shall hear and

decide all zoning applications in the remaining jurisdiction of the CZAB. Zoning actions advertised for hearing before the Board of County Commissioners shall be heard and decided by the board, and neither the subsequent appointment or election of additional CZAB members, nor the reconfiguration of the affected CZAB, shall divest the board of jurisdiction to hear such advertised applications. If prior to the mailing of the final notice of hearing pursuant to Section 33-310, new members of the affected CZAB have been appointed or elected, or the affected CZAB has been reconfigured, such that the CZAB has enough members to act, applications within the CZAB's jurisdiction shall be heard and decided by that CZAB upon notice pursuant to Section 33-310.

- (4) Any application encompassing property located within a municipality when jurisdiction is vested in Miami-Dade County pursuant to applicable zoning regulations or municipal charter or interlocal agreement.

(B) The County Commission shall have jurisdiction to hear appeals from decisions of the Community Zoning Appeals Boards as follows:

- (1) Applications for district boundary changes on individual pieces of property or on a neighborhood or area-wide basis.
- (2) Applications for district boundary changes which also contain requests for unusual use, new use, variance or special exception which is incidental or related thereto, or where there is pending on the same property or portion thereof more than one (1) application for district boundary change, variance, special exception, unusual or new use. When possible an appeal containing such requests shall be acted upon at the same public hearing.
- (3) All zoning applications by State and municipal entities and agencies.
- (4) Applications for unusual uses or amendments or modifications thereto described in Section 33-13(e) when said unusual

uses, amendments or modifications in connection with a class I or class IV permit application, as defined in Section 24-58.1.

- (5) Any appeal filed by the Director from any action of the Community Zoning Appeals Boards.
- (6) Notwithstanding any provision contained in any section of this Code, the Board of County Commissioners shall have appellate jurisdiction whenever it is contended that a decision of a Community Zoning Appeals Board constitutes a taking or deprivation of vested rights and administrative remedies of Section 2-114 have been exhausted.
- (7) Applications for appeals of administrative decisions pursuant to Section 33-311(A)(2).
- (8) Applications for development approval or modifications thereof for projects located within the Downtown Kendall Urban Center District.
- (9) Applications for development approval or modifications thereof for projects located within the Center or Edge sub-districts of the Naranja Community Urban Center District and all other Urban Center zoning districts.
- (10) Administrative determinations concerning mobile home parks pursuant to Section 33-311(2)(a) of this Code.

(C) The County Commission shall have jurisdiction to directly hear other applications as follows:

- (1) Upon application for, hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Development Impact Committee Executive Council or its Chairman in the discharge of its duties as defined in Sections 2-114.1, 2-114.2, 2-114.3, 2-114.4 and Chapters 28, 33-303.1(D)(3), 33E, [Section] 33G-6, 33H, 33I and 33J and 33K of the Code. The Board of County Commissioners shall also hear and decide appeals or other matters as provided by Sections 2-114.2, 2-114.3, and 2-114.4 of the Code.
- (2) Applications for developmental resolutions for which the applicant or the executive council of the DIC has invoked the administrative remedy set forth in Section 2-114.1, Code of Miami-Dade County, Florida and to which the procedure of Section 33-311(E)(1) applies.
- (3) Applications to modify or eliminate any provision of restrictive covenants, or part thereof, accepted at public hearing, where the covenant provides that only the Board of County Commissioners may modify or eliminate the provisions of such covenant.
- (4) Applications for non-use variance from the requirements of Section 33-35(c) of this code as to any structure subject to the provision of Article XXXIII(I) that is existing at the effective date of this ordinance or approved as described in Section 33-284.64.
- (5) Applications for variances from the provisions of this chapter to permit development described in ground leases with the County in existence as of the effective date of this ordinance. Any variance granted pursuant to this provision shall satisfy the general intent of this chapter.
- (6) Applications for appeals of administrative decisions. Upon application for, hear and decide appeals where it is alleged there is an error in the any order, requirement, decision or determination made by an administrative official in the interpretation of any portion of the regulations, or of any final decision adopted by resolution, except appeals of administrative site plan review, or appeals of administrative variances pursuant to the provisions of Section 33-36.1 of the code, said appeals first being under the jurisdiction of the Community Zoning Appeals Board. It is provided, however, that where zoning requests which would ordinarily be heard before the Community Zoning Appeals Board are joined with a request for an appeal of an administrative decision, the zoning requests shall remain pending before the Community Zoning Appeals Board

until the appeal of the administrative decision has been determined by the Board of County Commissioners.

- (7) Applications to modify or delete declarations of restrictive covenants recorded prior to December 16, 1999, encumbering property wholly located within the Downtown Kendall Urban Center District, as defined in Section 33-284.55 of this code.
- (8) Any application seeking a variance from adult entertainment establishment spacing requirements imposed by State Statute, as specified in Section 33-259.1.
- (9) Applications to modify or eliminate any condition or part thereof which has been imposed by any final decision adopted by resolution regulating any parcel of land located within the Downtown Kendall Urban Center District, or other Urban Center zoning district, where and to the extent that modification or elimination of the condition or part thereof is necessary to allow development conforming in all respects to the Downtown Kendall Urban Center District or other Urban Center zoning district regulations.
- (10) Upon application for, hear and decide appeals of decisions of the Rapid Transit Developmental Impact Committee pertaining to site plan approvals and related zoning actions issued pursuant to Section 33C-2(D)(9)(d) of the Code of Miami-Dade County.
- (11) Hear application for and, upon recommendation of the Developmental Impact Committee, grant or deny those special exceptions for public charter school facilities permitted by the regulations only upon approval after public hearing, provided the applied for special exception, in the opinion of the Board of County Commissioners, is found to be in compliance with the standards contained in Article XI and Section 33-311(A)(3) of this code.
  - (11.1) Notwithstanding the provisions of Section 33-13(e) of this code, applications for unusual uses for lake excavations to expand bona fide rockmining operations, as defined in Section 33-422(3) of the code, onto property contiguous and immediately adjacent to existing bona fide rockmining operations; associated Class I and Class IV permit applications as defined in Section 24-48.1; and all applications for uses ancillary to bona fide rockmining pursuant to Section 33-422(c) of this article.
  - (11.2) Hear application for and, upon recommendation of the Airport Developmental Impact Committee Executive Council, grant or deny applications for those special exceptions and variances pursuant to Article XXXVII of this code (Miami International Airport (Wilcox Field) Zoning).
- (12) Applications for public charter school facilities and expansions or modifications to existing public charter school facilities.
- (13) Applications for development approval or modifications thereof for projects located within the Core sub-district of the Naranja Community Urban Center District and all other Urban Center zoning districts after hearing and recommendation by the Community Zoning Appeals Board or Boards having jurisdiction over the area encompassed by the project.
- (14) Applications to modify or delete declarations of restrictive covenants recorded prior to July 27, 2005 (the effective date of this ordinance), encumbering property wholly located within any Urban Center zoning district, as defined in this code, where and to the extent that modification or elimination of the declaration of restrictive covenant or part thereof is necessary to allow development conforming in all respects to the applicable Urban Center District regulations.
- (15) Applications for zoning action on the property that is subject to a deed restriction or a restrictive covenant placed on the property in connection with its conveyance by the County, or in connection with a subsequent modification or release by the County of such restriction or covenant.

- (16) Except where permitted in the IU-3 District, applications for unusual use pertaining to electric power plants and ancillary uses.
- (17) Hear application for and grant or deny Director's applications for single-family and duplex lots owned by Miami-Dade County which have been designated for development under "The Infill Housing Initiative" pursuant to Article VII, Chapter 17 of this Code.

(D) The Board, after hearing why the application should or should not be granted, shall consider the matter in accordance with the criteria specified in this chapter, and shall by resolution either grant or deny the application. In granting any variances, special exceptions, new uses or unusual uses, the Board of County Commissioners may prescribe any reasonable conditions, restrictions and limitations it deems necessary or desirable in order to maintain the plan of the area and compatibility therewith. Such action of the Board of County Commissioners shall be final provided, no such action shall be taken until notice of time and place of the meeting at which the Board of County Commissioners will consider and take final action on the application has been first published as provided in Section 33-310 hereof. Anything in this article to the contrary notwithstanding, when an application for a district boundary change or special exception, new use, unusual use or variance is filed by the Director it will only be decided by the County Commission after receiving the recommendation of the Director and after the required noticed public hearing, and such decision shall then be final. Notwithstanding anything in this article or the Code of Miami-Dade County to the contrary, the Board of County Commissioners may reconsider its action upon a zoning application only in accordance with Section 33-319(k) of this code or only at the same meeting at which the action was taken and solely for the purpose of avoiding a manifest injustice. Except as otherwise specified hereby, if a motion to reconsider is adopted, no further affirmative action shall be taken until notice of such reconsideration and time and place of final action is provided in accordance with Section 33-310 hereof; provided, however, that

such affirmative action may be taken before the next item on the zoning agenda is called for consideration or before a recess or adjournment is called, whichever occurs first.

(E) If an application is before the Board of County Commissioners pursuant to this article, be it by way of appeal, recommendation or otherwise, it shall have authority to consider and take final action upon any and all matters and requests contained in the application, any other provisions in this article notwithstanding. In making any final decisions, the Commission shall be guided by the standards and guides applicable to the Community Zoning Appeals Boards or as otherwise specified in this chapter. It shall consider all relevant and material evidence offered to show the impact of the development upon Miami-Dade County. The procedural requirements of Section 33-311(F) and 33-311(G) shall apply to hearings held pursuant to this section.

(F) Reserved.

(G) The following additional procedures shall apply to zoning hearings before the County Commission:

- (1) *Deferrals.* The County Commission may defer action on any matter before it in order to inspect the site in question, to remand to the Community Zoning Appeals Boards, or for any other justifiable and reasonable reason. Whenever a deferral is approved at the request of the applicant, the applicant shall be required to pay a deferral fee in the amount of round-trip public transit fare for each person present at the hearing in opposition to the application, or two hundred fifty dollars (\$250.00), whichever is greater. The Clerk of the Board shall prepare and have available at the hearing appropriate voucher forms, in duplicate, to be filed under oath by persons present to oppose the application in question. Each objector presenting a completed voucher to the Clerk shall be given two (2) transit tokens. At the end of the meetings at which the deferral was requested, the Clerk shall, for each deferral, total the number of vouchers issued, determine the value of

transit fares represented by the tokens, and submit the deferral fee to the applicant, or his attorney. The applicant requesting the deferral shall pay the deferral fee to the Department, which shall then pay an amount equal to the value of the transit fares to the transit agency. Except for that portion of the deferral fee paid to the transit agency, all monies collected by the Department as deferral fees shall be deposited into a separate account and shall be expended only for purposes of administering and enforcing the provisions hereof. In the event that the applicant does not pay the deferral fee prior to the date of the scheduled deferred hearing, the application shall be deemed to have been voluntarily withdrawn without prejudice, the applicant shall be deemed to be in violation of this provision, and enforcement may be effectuated through all available means including, but not limited to, Chapter 8CC of the Code of Miami-Dade County, Florida. Notwithstanding the foregoing, the County Commission shall, at the time of approving a deferral, have the discretion to waive the provisions of this section upon a showing of good cause for the deferral.

- (2) *Record.* When any final action has been taken by the Board of County Commissioners, its record, together with a certified copy of its minutes and resolutions pertaining to such action shall be transmitted to the Department for filing, and the same shall be open to the public for inspection at reasonable times and hours.
- (3) *Voting Requirements.* Save and except as otherwise provided by ordinance, all actions taken by the Board of County Commissioners under this article shall be by a majority vote of all members present. When there is an insufficient number of votes to either affirm or reverse a Community Zoning Appeals Boards' resolution or on a direct application there is an insufficient number of votes to either approve or deny an application, the result shall be deemed a tie vote. Whenever a tie vote occurs, and

no other available motion on the application is made and approved before the next application is called for consideration or before a recess or adjournment is called, whichever occurs first, the matter shall be carried over to the next regularly scheduled meeting.

(H) The procedures set forth in Section 33-311(D) and (E) shall be applicable to hearings held pursuant to this section.

(I) The chair, or vice-chair or acting chair, may administer oaths and compel the attendance of witnesses in the same manner prescribed in the circuit court.

(Ord. No. 60-14, 4-19-60; Ord. No. 61-30, § 1, 6-27-61; Ord. No. 62-48, § 1E, 12-4-62; Ord. No. 73-46, § 1, 5-1-73; Ord. No. 74-20, § 7, 4-3-74; Ord. No. 74-40, § 5, 6-4-74; Ord. No. 74-69, § 1, 9-3-74; Ord. No. 75-47, § 6, 6-18-75; Ord. No. 75-100, § 2, 11-4-75; Ord. No. 77-55, § 1, 7-19-77; Ord. No. 83-70, § 16, 9-6-83; Ord. No. 84-70, § 1, 9-4-84; Ord. No. 87-6, § 1, 2-17-87; Ord. No. 88-112, § 2, 12-6-88; Ord. No. 89-10, § 6, 2-21-89; Ord. No. 90-26, § 3, 3-20-90; Ord. No. 90-31, § 3, 4-3-90; Ord. No. 90-36, § 1, 4-17-90; Ord. No. 90-59, § 3, 6-19-90; Ord. No. 90-76, § 4, 7-24-90; Ord. No. 92-84, § 2, 7-21-92; Ord. No. 95-79, § 3, 5-2-95; Ord. No. 95-215, § 1, 12-5-95; Ord. No. 96-62, § 1, 5-7-96; Ord. No. 96-123, § 1, 7-18-96; Ord. No. 96-127, § 35, 9-4-96; Ord. No. 97-9, § 2, 2-4-97; Ord. No. 97-16, § 3, 2-25-97; Ord. No. 97-131, § 1, 7-22-97; Ord. No. 97-198, § 2, 11-4-97; Ord. No. 98-2, § 2, 1-13-98; Ord. No. 98-125, § 21, 9-3-98; Ord. No. 98-175, § 3, 12-3-98; Ord. No. 99-3, § 1, 1-21-99; Ord. No. 99-118, § 2, 9-21-99; Ord. No. 99-166, § 5, 12-16-99; Ord. No. 00-31, § 2, 2-24-00; Ord. No. 00-51, § 2, 4-11-00; Ord. No. 01-121, § 2, 7-24-01; Ord. No. 01-161, § 1, 10-23-01; Ord. No. 01-227, § 6, 12-20-01; Ord. No. 02-23, § 7, 2-12-02; Ord. No. 02-56, § 2, 4-23-02; Ord. No. 02-77, § 2, 5-7-02; Ord. No. 03-93, § 5, 4-22-03; Ord. No. 03-113, § 1, 5-6-03; Ord. No. 03-120, § 2, 5-6-03; Ord. No. 03-272, § 1, 12-16-03; Ord. No. 04-108, § 4, 6-8-04; Ord. No. 04-163, § 3, 9-9-04; Ord. No. 04-203, § 16, 11-30-04; Ord. No. 04-217, § 13, 12-2-04; Ord. No. 05-143, § 12, 7-7-05; Ord. No. 06-09, § 1, 1-24-06; Ord. No. 06-23, § 2, 2-21-06; Ord. No. 06-66, § 1, 5-9-06; Ord. No. 06-190, § 1, 12-19-06; Ord. No. 07-37, § 1, 2-20-07; Ord. No.

09-81, § 6, 9-1-09; Ord. No. 10-09, § 1, 2-2-10; Ord. No. 10-58, § 11, 9-21-10; Ord. No. 11-62, § 3, 8-2-11; Ord. No. 13-16, § 10, 2-5-13)

**Editor's note**—Section 1 of Ordinance No. 97-9, adopted February 4, 1997, which amended previous provision § 33-314(c), shall apply to zoning applications filed with the Department of Planning, Development and Regulation prior to February 4, 1997. Section 2 of this ordinance shall apply to zoning applications filed with the Department of Planning, Development and Regulation on or after February 4, 1997.

### **Sec. 33-315. Regulation amendment request.**

(A) Request for regulation amendments may be filed with the Director who shall assign the request on a blind filing basis to a Community Zoning Appeals Board.

(B) Notice of the Board's action on a request for regulation amendment shall be limited to the advertisement provision of Section 33-310(C)(1) except the property's location and legal description need not be included.

(C) The Community Zoning Appeals Board's action on a regulation amendment shall take the form of a recommendation which shall be transmitted to the Board of County Commissioners.

(D) Recommendations of the Community Zoning Appeals Board for or against regulation amendments when received by the Board of County Commissioners shall be considered and if it is determined to amend the regulations in any manner, such amendment shall be enacted by ordinance as provided by law.

(Ord. No. 96-127, § 36, 9-4-96)

**Editor's note**—Ordinance No. 96-127, § 36, adopted September 4, 1996, repealed § 33-315 and replaced such section with a new § 33-315. Formerly, such section pertained to action by Board of County Commissioners and derived from Ord. No. 60-14, 4-19-60; Ord. No. 61-30, § 1, 6-27-61; Ord. No. 64-3, § 3, 2-4-64; Ord. No. 71-12, § 2, 1-19-71; Ord. No. 74-20, § 8, 4-3-74; Ord. No. 75-47, § 7, 6-18-75; Ord. No. 77-40, § 1, 6-21-77; Ord. No. 89-10, § 7, 2-21-89; Ord. No. 91-16, § 1, 2-19-91; Ord. No. 91-21, § 1, 2-19-91; Ord. No. 92-95, § 1, 9-15-92; Ord. No. 94-37, § 3, 3-3-94; Ord. No. 95-63, § 1, 4-4-95; Ord. No. 95-91, § 1, 6-6-95; Ord. No. 95-122, § 1, 7-11-95; Ord. No. 95-215, § 1, 12-5-95.

### **Sec. 33-315.1. Reserved.**

**Editor's note**—Ord. No. 03-93, § 6, adopted April 22, 2003, repealed section 33-315.1 in its entirety. Former section 33-315.1 pertained to reformation of resolutions to correct

technical errors, and derived from Ord. No. 94-153, § 1, adopted July 28, 1994; Ord. No. 96-127, § 37, adopted Sept. 4, 1996.

### **Sec. 33-315.2. Amendment or deletion of covenant proviso of resolution.**

An application for public hearing may be filed to amend or delete, in whole or in part, that portion of a resolution which accepts or requires a restrictive covenant by condition or otherwise, hereinafter the covenant proviso, where the covenant has not been recorded in the Public Records of Miami-Dade County. An application to amend or delete a covenant proviso may seek effectively the same relief that could have been sought by modification or release of the restrictive covenant had such covenant been timely recorded. Notice shall be provided pursuant to Section 33-310 herein, except that the required mailed notices shall comply with the 1/2 mile radius provision. Original jurisdiction over applications under this section shall be with the board that issued the resolution containing the covenant proviso. The appellate process shall be the same as for the appeal of an application seeking the approvals contained in the prior resolution. No application under this section shall be filed and accepted unless (a) the applicant states under oath that the covenant in question has not been recorded as evidenced by a title search or attorney's opinion of title current to within 30 days of filing this application, and (b) states under oath why it is not reasonably practicable for said covenant to be timely recorded as contemplated by the prior resolution, and (c) the applicant has complied with all known requirements which would have pertained to the modification or release of the covenant had that covenant been recorded pursuant to the covenant proviso of the resolution. In considering an application pursuant to this section, the applicable board shall consider the following, in addition to all criteria pertaining to the approvals to which the covenant proviso of the prior resolution pertains:

1. The extent to which the County, the applicant and the applicant's predecessor(s) in title are responsible for the failure of the covenant to be timely recorded, including whether the failure to record the covenant is a result of clerical or other error;

2. Whether there was an intent to deceive or mislead the County in connection with the prior resolution containing the covenant proviso; and
3. Any detriment which the granting of the application may cause to the County, or the public, including the area affected. The consideration of detriment shall include, but not be limited to (a) whether granting relief will impair the County's ability to obtain compliance with the covenant proviso by the applicant or other property owners to the extent that the covenant proviso may remain in effect after a revision; and (b) whether the applicant will proffer a new, recordable covenant addressing the concerns that were to have been addressed by the prior covenant.

(Ord. No. 00-83, § 1, 6-20-00)

**Sec. 33-316. Exhaustion of remedies; court review.**

No person aggrieved by any zoning resolution order, requirement, decision or determination of an administrative official or by any decision of the Community Zoning Appeals Board may apply to the Court for relief unless such person has first exhausted the remedies provided for herein and taken all available steps provided in this article. It is the intention of the Board of County Commissioners that all steps as provided by this article shall be taken before any application is made to the Court for relief; and no application shall be made to the Court for relief except from a resolution adopted by the Board of County Commissioners, or where applicable from a resolution adopted by a Community Zoning Appeals Board pursuant to this article. Zoning resolutions of the Board of County Commissioners, or where applicable, zoning resolutions of Community Zoning Appeals Boards shall be reviewed in accordance with the procedure and within the time provided by the Florida Rules of Appellate Procedure for the review of the quasi-judicial rulings of any commission or board; and such time shall commence to run from the date the zoning resolution sought to be reviewed is transmitted to the Clerk of the Commission. The Director, or his duly

authorized representative, shall affix to each zoning resolution the date said zoning resolution is transmitted to the Clerk of the Commission. The Clerk of the Board shall comply with all requirements of the Florida Rules of Appellate Procedure. For the purposes of appeal the Director shall make available, for public inspection and copying, the record upon which each final decision of the Board of County Commissioners or Community Zoning Appeals Board is based; provided, the Director may make a reasonable charge commensurate with the cost in the event the Department is able to and does furnish copies of all or any portion of the record. Prior to certifying a copy of any record or portion thereof, the Director or his designee shall make all necessary corrections in order that the copy is a true and correct copy of the record, or those portions requested, and shall make a charge as provided by administrative order as amended from time to time for preparation of the record, instrument maps, picture or other exhibit; provided, the charges here authorized are not intended to repeal or amend any fee or schedule of fees otherwise established. The Chair, Vice-chair or Acting Chair of the Board of County Commissioners or Community Zoning Appeals Board at any zoning hearing before the Commission or Community Zoning Appeals Board may swear witnesses and, upon timely request in writing, compel the attendance of witnesses in the same manner prescribed in the Circuit Court. The Director shall employ a qualified court reporter to report the proceedings before the Board of County Commissioners and Community Zoning Appeals Board, who shall transcribe the notes only at the request of the County or other interested party, at the expense of the one (1) making the request. Such transcript, as well as the transcript of the proceedings before the Community Zoning Appeals Board, when certified by the reporter, may be used in a court review of a matter in issue.

It is the intent of the Board of County Commissioners that no decision under this chapter shall constitute a temporary or permanent taking of private property or an abrogation of vested rights (taking or vested rights deprivation). In the event that any court shall determine that a decision of the Board of County Commissioners or Community Zoning Appeals Board under this chapter

constitutes a taking or vested rights abrogation, such decision of the board is declared to be non-final and the court is hereby requested to remand the matter to the Board of County Commissioners, which shall reconsider the matter after notice of the County Commission hearing is given pursuant to Section 33-310(c) through (f). In the event that a court fails to remand a matter to the Board of County Commissioners after finding that a taking or vested rights abrogation has occurred, the director is instructed to forthwith file an application to remedy such taking or vested rights abrogation, which application shall be heard directly by the Board of County Commissioners after notice is given pursuant to Section 33-310(c) through (f). The Board of County Commissioners may elect to request that any remand or director's application be deferred until a later point in the litigation, including the completion of any judicial appeals. Notwithstanding anything to the contrary contained in this chapter, the Board of County Commissioners shall have original administrative jurisdiction over any remand or director's application pursuant to this paragraph.

(Ord. No. 60-14, 4-19-60; Ord. No. 61-30, § 1, 6-27-61; Ord. No. 62-48, § 1F, 12-4-62; Ord. No. 64-65, § 6, 12-15-64; Ord. No. 65-11, § 2, 2-16-65; Ord. No. 66-66, § 5, 12-20-66; Ord. No. 76-74, § 1, 7-20-76; Ord. No. 78-52, § 2, 7-18-78; Ord. No. 79-91, § 1, 10-16-79; Ord. No. 94-37, § 4, 3-3-94; Ord. No. 95-215, § 1, 12-5-95; Ord. No. 96-127, § 38, 9-4-96; Ord. No. 13-16, § 11, 2-5-13)

**Sec. 33-317. Limitation on issuance of permits.**

The Department shall not issue any type of permit or certificate based upon any action of the Community Zoning Appeals Board which the County Commission has jurisdiction to review until a final decision has been rendered on the application by the County Commission as provided by this chapter; provided, however, a temporary conditional permit or certificate may be issued prior to such final decision if the Director should first determine that the withholding of the same would cause imminent peril to life or property and then only upon such conditions and

limitations, including the furnishing of an appropriate bond, as may be deemed proper by the Director.

Upon application of the Director, any variance, special exception, new use, special permit or unusual use heretofore or hereafter granted that is not utilized within the three-year period following the date of its grant or approval, may be terminated by the Board of County Commissioners after the required noticed public hearing or hearings, if it is determined that there have been sufficient changes in circumstances in the neighborhood and area concerned that to permit the same to be used would be detrimental to the area and incompatible therewith; provided, a variance shall not be terminated if the guidelines for granting the same exist. The foregoing provision shall not apply if the resolution granting the variance, special exception, new use, special permit or unusual use establishes a specific time limitation for utilizing the same. In such instances, the time limitation established by such resolution shall prevail.

In the event application is made for a change of zoning on property which possesses any variance, special exception, new use, special permit or unusual use not yet utilized, no permits or certificates shall be issued for such variance, special exception, new use, special permit or unusual use until the hearing has been concluded. If the application for change of zoning is approved, the variance, special exception, new use, special permit or unusual use shall terminate, unless continued by the rezoning resolution; otherwise such variance, special exception, new use, special permit or unusual use shall remain in full force and effect, unless terminated by other provisions in this section.

A variance, special exception, new use, special permit or unusual use shall be deemed to have been utilized if the use pursuant thereto shall have been established, or if a building permit has been issued, acted upon, and the development to which such variance, special exception, new use, special permit or unusual use is an integral part is progressively and continuously carried to conclusion.

(Ord. No. 60-14, 4-19-60; Ord. No. 61-30, § 1, 6-27-61; Ord. No. 73-104, § 1, 12-18-73; Ord. No. 96-127, § 38, 9-4-96)