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**RESOLUTION NO. 04-58**

**ZONING APPLICATION 04-7-VPB-3 (04-99)**

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; DENYING THE APPLICATION OF PUBLIX SUPERMARKETS, INC. (14599 SOUTH DIXIE HIGHWAY) FOR A NON-USE VARIANCE (LIQUOR PACKAGE STORE OPERATIONS ON SUNDAYS); PROVIDING AN EFFECTIVE DATE.

WHEREAS, the applicant made application for non-use variance, as described in the Miami-Dade Department of Planning and Zoning Recommendation to the Village of Palmetto Bay, which is attached to this resolution; and,

WHEREAS, the village council of the Village of Palmetto Bay conducted a quasi-judicial hearing on the application at Southwood Middle School on July 12, 2004; and,

WHEREAS, the mayor and village council finds, based on substantial competent evidence in the record, that the application has not satisfied its burden of demonstrating that a use would be consistent with surrounding neighborhood, with surrounding uses, that it would not negatively affect the village and not a detriment to the community as required under section 33-311(A)(4)(b); and,

WHEREAS, the mayor and village council find that applicant is not being denied a reasonable use of its property and based on evidence presented the property is currently being utilized in accordance with underlying zoning district regulations; and,

WHEREAS, based on the foregoing finding, the mayor and village council determined to deny the applicant, as provided in this resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1. A hearing on the present applications was held on July 12, 2004 in accordance with ordinance no. 02-03, entitled "Quasi-judicial hearing procedures." Pursuant to the hearing, the village council makes the following findings of fact, conclusions of law and order.

1            Section 2.    Findings of fact.  
2

- 3            1.    The applicant is Publix Supermarkets, Inc. The property is a shopping  
4            center with an existing liquor store, zoned BU-1A, located at 14599 South  
5            Dixie Highway.  
6            2.    The applicant is requesting approval to permit the existing liquor store to be  
7            open on Sundays (not permitted).  
8            3.    The village council adopts specific portions of the cover sheet to the county  
9            staff report under the sections entitled Zoning Hearings History,  
10           Comprehensive Development Master Plan (CDMP), Neighborhood  
11           Characteristics, and Site and Buildings and Neighborhood Services as part  
12           of its findings of fact.  
13           4.    No other municipality surrounding the village has Sunday liquor sales.  
14           5.    The applicant failed to show how Sunday liquor sales will have an impact  
15           on Publix bottom line.  
16           6.    There are no alcohol sales on Sunday from Homestead to South Miami.  
17           7.    Only 1.1% of the store is dedicated to liquor store, which percentage fails  
18           to demonstrate hardship or detriment to Publix in not being able to sell  
19           alcohol on Sundays.  
20           8.    Publix remains able to sell beer and wine on Sundays.  
21           9.    Testimony was introduced that 98.9% of the store is not related to alcohol  
22           sales.  
23           10.  No evidence presented on unnecessary hardship under 33-311(A)(4)(c),  
24           which is required to grant non-use variance under that provision.  
25

26           Section 3.    Conclusions of law.  
27

- 28           1.    The village council rejects the portions of the county recommendation  
29           entitled Pertinent Requirements/Standards and Analysis as its conclusions  
30           of law.  
31           2.    The village council concludes that the application for alternative site  
32           development order is incompatible with the Non-Use Variance Standards  
33           Section 33-311(A)(4)(b).  
34           3.    The applicant did not establish that it was entitled to a non-use variance.  
35           4.    The applicant did not establish to satisfaction of the village council that the  
36           use (Sunday liquor sales) would not negatively affect the village.  
37           5.    The applicant did not establish to satisfaction of the village council that the  
38           use is compatible with other surrounding land uses within the village.  
39           6.    The applicant did not establish to satisfaction of the village council that the  
40           use would not be detrimental to the community.

- 1 7. The village has never approved Sunday liquor sales.  
2 8. The applicant did not adequately establish an overwhelming need for  
3 Sunday liquor sales. There is no evidence of necessity.  
4 9. The applicant did not establish to village's satisfaction that Sunday liquor  
5 sales are compatible with and not a detriment to the community.  
6 10. The applicant did not establish a need nor satisfactorily express a public  
7 interest for Sunday liquor sales, which public interest would compel the  
8 village to approve the use.  
9

10 Section 4. Order.  
11

- 12 1. The application for a non-use variance is denied without prejudice.  
13

14 Section 5. Record.  
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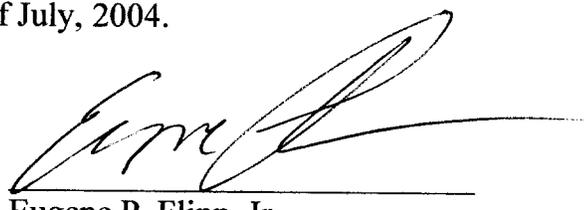
16 The record shall consist of the notice of hearing, the applications, documents  
17 submitted by the applicant and the applicant's representatives to the Miami-Dade  
18 County Department of Planning and Zoning in connection with the applications,  
19 the county recommendation and attached cover sheet and documents, the  
20 testimony of sworn witnesses and documents presented at the quasi-judicial  
21 hearing, and the tape and minutes of the hearing. The record shall be maintained  
22 by the village clerk.  
23

24 Section 6. This resolution shall take effect immediately upon approval.  
25

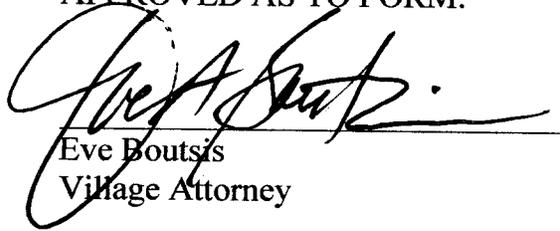
26 PASSED and ADOPTED this 12<sup>th</sup> day of July, 2004.  
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30 Attest: 

31 Meighan Pier  
32 Village Clerk  
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34 Eugene P. Flinn, Jr.  
35 Mayor  
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37 APPROVED AS TO FORM:  
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39 Eve Boutsis  
40 Village Attorney

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FINAL VOTE AT ADOPTION:

Mayor Eugene P. Flinn, Jr.	<u>YES</u>
Vice-Mayor Linda Robinson	<u>YES</u>
Council Member Ed Feller	<u>YES</u>
Council Member Paul Neidhart	<u>YES</u>
Council Member John Breder	<u>NO</u>