

ZONING RESOLUTION NO. 08-09
VPB-07-009

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; APPROVING THE APPLICATION OF ISAAC'S DIXIE HOLDING LLC, 17225 S. DIXIE HIGHWAY FOR A PARKING VARIANCE TO ALLOW 100% OF REQUIRED PARKING TO BE LOCATED OFF-SITE WHERE A MAXIMUM OF 60% OF OFF-SITE PARKING IS ALLOWED PURSUANT TO FT&I ZONING DISTRICT REGULATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the applicant made applications for Isaac's Dixie Holding LLC, located at 17225 South Dixie Highway for a parking variance to allow 100% of required parking to be located off-site where a maximum of 60% of off-site parking is allowed pursuant to the Village's FT&I zoning district regulations, as described in the Village's 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 January 14, 2008; and,

WHEREAS, the mayor and Village Council finds, based on substantial competent evidence in the record, that the application for a parking variance under the Village's FT&I Ordinance is consistent with the Village of Palmetto Bay Comprehensive Plan and the applicable land development regulations; and,

WHEREAS, based on the foregoing finding, the Mayor and Village Council determined to grant the applications, 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 January 14, 2008 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.

Section 2. Findings of fact.

1. Approval of the parking variance would allow the applicant to provide a mixed-use project on an irregularly-shaped land parcel consisting of a multi-use office and retail center as contemplated in the Village's adopted Franjo Triangle and U.S.1 Commercial Island (FT&I) Zoning District regulations. The parking variance, if granted, will provide 100% of its required parking, 41 parking spaces, off-site (on-street parking) for the applicant's development, where 60% or 25 parking spaces is permitted off-site. As part of the development approval, the applicant shall be required to provide landscaping, paving and lighting along SW 95th Avenue.

1
2 2. This application will bring additional traffic to the Business and Office district, as a
3 vacant 1,500 sq.ft. building will be replaced by a 20,066 sq.ft. office/retail building.
4

5 3. On December 5, 1957 Miami-Dade County approved the applicant's request for a
6 zoning district change from Agricultural (AU) to Limited Business District (BU-IA).
7

8 4. On January 25th 1984, the applicant pursuant to zoning resolution 4-ZAB-45-85,
9 approved a site plan for a Dairy Queen at the property.
10

11 5. On December 16, 1987, the Miami-Dade County zoning appeals board pursuant to
12 zoning resolution 4-ZAB-517-87, approved a site plan to change the site from a Dairy Queen to a
13 Ten Minute Oil Change, which revised site plan indicates two existing driveways into SW 95th
14 Avenue and two proposed additions to the building. Additionally, the applicant sought, but was
15 denied, a non-use variance of sign regulations to permit the maintenance and continued use of a 96
16 sq.ft. detached sign setback which was 10'5" when 12' was required from the front (west) property
17 line and a setback of 10' when 89' was required from the side (south) property line. As a condition
18 of the approval, the applicant was required to dedicate certain rights-of-way.
19

20 6. On February 14, 1988, the Miami-Dade County zoning appeals board, pursuant to
21 zoning resolution Z-31-88, re-affirmed the 1987 zoning resolution 4-ZAB-517-87.
22

23 7. On February 16, 1988, the Miami-Dade County zoning appeals board, pursuant to
24 zoning resolution Z-32-88, again re-affirmed the 1987 zoning resolution 4-ZAB-517-87.
25

26 8. In 1988, an adjacent property owner, Milton S. Jennings, appealed the decision of the
27 zoning appeals board to the Circuit Court of the 11th Judicial Circuit. Mr. Jennings was the property
28 owner to the east of the applicant's property. As part of that litigation, in 1992, the parties executed
29 a settlement agreement which required the recording of a declaration of restrictive covenants. As
30 part of the approval, the County required the recording of a Declaration of Restrictive Covenants
31 running with the land that requires the property to be tied to the Ten Minute Oil Change site plan
32 and use identified in the site plan (oil change facility), and that the property develop, maintain and
33 provide access through the driveways identified on the site plan.
34

35 9. For any modification of the site plan or use to be approved, the covenant must be
36 modified, amended or released by the property owner and by Milton Jennings (his heirs or assigns)
37 or, alternatively, the improvements of the property are to be removed at which point the covenant
38 would automatically become null and void.
39

40 10. On February 24, 1993, the Miami-Dade County zoning appeals board, pursuant to
41 zoning resolution 4-ZAB-48-93, approved with conditions, a non-use variance of the zoning
42 regulations to permit a 6' high masonry wall along the rear (east) property line (SW 95th Avenue) and
43 along the interior side (south) property line (5' and 4' permitted respectively); and a non-use variance
44 requiring a 10' wide landscape strip and a masonry wall set in 10' from the official right-of-way line

1 at the rear of a through lot; to delete the landscape strip and permit the wall along the property line
2 with two driveways.
3

4 11. On December 12, 2007, the applicant obtained permit B-2007-6350 for demolition
5 of the improvements on the property at which time the declaration of restrictive covenants become
6 null and void.
7

8 12. The subject property is located on the southwest corner of SW 95th Avenue and S.
9 Dixie Highway, Village of Palmetto Bay, Florida. The surrounding area is characterized by a multi-
10 family residential complex to the east that was converted from apartments to condominiums in
11 2005. This property is zoned (RU-4A) High Density Apartment House District, 50 units per net acre
12 or Hotel/Motel District, 75 units per net acre, and consists of the Village Homes and Condos at
13 Palmetto Bay Development.
14

15 13. The properties to the north and west are zoned, (MC) Mixed-Use Corridor and
16 consist of Maroone Nissan and South Motors Infinity car dealerships. The property to the south is
17 zoned (BO) Business and Office. The parcel consists of a single story office building.
18

19 14. The subject property is bounded by the north bound lane of S. Dixie Highway and
20 SW 95th Avenue.
21

22 15. The applicant is Isaac's Dixie Holding LLC. The property that is the subject of this
23 zoning resolution is located at 17255 S. Dixie Highway. It is currently zoned BO, Business and
24 Office, in the Franjo Triangle & U.S. 1 Island zoning district. The applicant, pursuant to section 33-
25 311(A)(4)(a) of the Miami-Dade County Code and Ordinance 06-06 as adopted and amended via
26 ordinance 07-33 of the Village of Palmetto Bay Code is seeking a parking variance. The subject
27 12,210 sq.ft. property is located on the southeast corner of SW 95th Avenue and S. Dixie Highway.
28

29 16. The applicant has submitted a site plan, floor plans and elevations showing the
30 development of the property with a two-story, mixed-use (office, retail) structure. The vacant, one-
31 story structure was recently demolished, with a permit. It was previously used as an oil change retail
32 business.
33

34 17. The BO zoning district underlying the property is typically characterized by the
35 construction of mixed-use structures ranging from 2 to 5 stories in height which maximize the total
36 land parcel due to reduced setback requirements so that building frontages are closer to sidewalks
37 creating a pedestrian-friendly environment.
38

39 18. The proposed site is an irregularly-shaped pie parcel. While the proposed
40 development complies with section 6 *General Requirements* of the FT&I district including building
41 placement, design parameters, set backs, and height requirements, it does not satisfy section (E)(3)
42 entitled "Parking." The proposed office/retail development is required to provide a total of 42
43 parking spaces of which 40% or 17 parking spaces be provided on-site with the balance of 60% or
44 25 parking spaces allowed to be provided off-site. Due to the nature of the irregularly-shaped parcel,

1 the applicant is unable to provide the 17 required on-site parking spaces while fully satisfying all
2 other requirements of the FT&I zoning regulations.
3

4 19. In order to achieve convenient parking to serve the proposed development, the
5 applicant is proposing to build 42 angled parking spaces along the west side of SW 95th Avenue in
6 accordance with the FT&I Street Improvement Standards, along with landscaping and lighting
7 improvements. On-street parking along the west side of the avenue only is intended to protect the
8 adjacent condominium complex from traffic impacts associated with on-street parking. The
9 provision of on-street parking to serve the proposed development is immediately adjacent to the site
10 and spans the full distance between SW 174th Street and U.S. 1.
11

12 20. The proposed development further implements the vision for redevelopment of the
13 FT&I area. Construction of Class A office space with ground level retail comprising the proposed
14 development would replace a dilapidated, vacant building frequently targeted with graffiti. The
15 variance request pursuant to 33-311(A)(4)(b) is in keeping with the existing development pattern
16 sought for the area in that it is compatible with the surrounding zoning and land use regulations. As
17 there is no actual hardship, the criteria of the alternative non-use variance provisions of 33-
18 311(A)(4)(c) are not met.
19

20 Section 3. Conclusions of law.

21 1. The adopted 2005 Village of Palmetto Bay Comprehensive Plan, Future Land Use
22 Map (FLUM) designates the site for Business and Office (BO) use. The BO category
23 accommodates the full range of sales and service activities including retail, wholesale, personal and
24 professional services, commercial and professional offices, hotels, motels, hospitals, theaters,
25 medical buildings, nursing homes, entertainment and cultural facilities, amusements and commercial
26 recreation establishments.
27

28 2. These uses may occur in self-contained centers, campus parks and municipal center
29 business districts. The specific range and intensity of uses appropriate in BO areas vary by location
30 as a function of such factors as availability of public services, roadway access and neighborhood
31 compatibility.
32

33 3. Special limitations may be imposed on uses in BO where necessary to protect
34 environmental resources, including wellfield protection areas. Through the assignment of zoning
35 districts and special conditions, the specific range and intensity of uses appropriate for a particular
36 site are to be determined by the Village. Strip commercial shopping centers with inadequate lot
37 depth, which allow only a single row of commercial structures and parking in front, are discouraged
38 in this designation.
39

40 4. The floor area ratio (FAR) is 0.4 for the first story, plus 0.11 for each additional story
41 up to six (6) stories.
42

43 5. Mixing of residential use with commercial, office and hotels is also permitted in BO
44 areas provided that the scale and intensity is not out-of-character with adjacent and nearby

1 development, and the project does not negatively impact any area neighborhoods. Where these
2 conditions are met, residential density may be approved up to one density category higher than the
3 average land use density of adjacent parcels if no residentially designated parcels exist adjacent to a
4 BO parcel or no higher density categories exist on the Village FLUM, the maximum densities
5 allowed shall be 13.0 dwelling units per gross acre.
6

7 6. Category-wide, the mix of uses envisioned for BO land use includes up to 85%
8 commercial/office and 15% residential; however, no specific mix of uses will be required for any
9 individual parcel. Officials within the Village's Department of Planning, Zoning & Building Services
10 will be responsible for monitoring the mix of land uses within the BO land use category.
11

12 7. Pursuant to Village Ordinance 07-33, which amended Village Ordinance 06-06, the
13 applicant is seeking a parking variance from the Franjo Triangle and U.S. 1 Island (FT&I) district
14 zoning regulations. The standard of review for the variance request is located at section 33-
15 311(A)(4), of the Miami-Dade County Code as adopted by the Village. In evaluating an application
16 for a Non-Use Variance of Parking Regulations, Section 33-311(A)(4)(b) and (c) provides that the
17 Village Council take into consideration, among other factors, the extent to which include:
18

19 General Requirements under 33-311:
20

- 21 a. The development permitted by the application, if granted, conforms to the
22 Comprehensive Plan for the Village of Palmetto Bay, Florida; is consistent with
23 applicable area or neighborhood studies or plans, and would serve a public benefit
24 warranting the granting of the application at the time it is considered.
25
- 26 b. The development permitted by the application, if granted, will have a favorable or
27 unfavorable impact on the environmental and natural resources of the Village of
28 Palmetto Bay, including consideration of the means and estimated cost necessary to
29 minimize the adverse impacts; the extent to which alternatives to alleviate adverse
30 impacts may have a substantial impact on the on the natural and human
31 environment; and whether any irreversible or irretrievable commitment of natural
32 resources will occur as a result of the propose development;
33
- 34 c. The development permitted by the application, if granted, will have a favorable or
35 unfavorable impact to the economy of the Village of Palmetto Bay, Florida;
36
- 37 d. The development permitted by the application, if granted will efficiently use or
38 unduly burden water, sewer and solid waste disposal:
39
- 40 e. The development permitted by the application, if granted, will efficiently use or
41 unduly burden or affect public transportation facilities, including mass transit, roads,
42 streets and highways which have been constructed or planned and budgeted for
43 construction, and if the development is or will be accessible by public or private
44 roads, streets or highways.
45

1 8. After making a determination under the above general factors, the Village Council, is
2 to determine whether the variance application complies with either 33-311(A)(4)(b), the non-use
3 variance standard or 33-311(A)(4)(c), the alternate non-use variance standard.
4

5 9. Pursuant to section 33-311(A)(4)(b), the Village Council, after public hearing, may
6 grant a non-use variance upon a showing by the applicant that the non-use variance maintains the
7 basic intent and purpose of the zoning, subdivision and other land use regulations, which is to
8 protect the general welfare of the public, particularly as it affects the stability and appearance of the
9 community and provided that the non-use variance will be otherwise compatible with the
10 surrounding land uses and would not be detrimental to the community. No showing of unnecessary
11 hardship to the land is required.
12

13 10. Alternatively, the Village Council is to determine whether the standard under 33-
14 311(A)(4)(c) has been met. A non-use variance from the terms of the zoning and subdivision
15 regulations, may be granted upon a showing by the applicant that the variance will not be contrary to
16 the public interest, where owing to special conditions, a literal enforcement of the provisions thereof
17 will result in unnecessary hardship, and so the spirit of the regulations shall be observed and
18 substantial justice done; provided, that the non-use variance will be in harmony with the general
19 purpose and intent of the regulation, and that the same is the minimum non-use variance that will
20 permit the reasonable use of the premises.
21

22
23 Section 4. Order.

24 The Village Council approves the parking variance request pursuant to 33-311(A)(4)(a),
25 which will allow the applicant to provide on-street parking for the proposed mixed-use
26 development. The mixed-use concept complies with the Village's vision for the FT&I zoning
27 district. Staff finds that the parking variance request would be in keeping with the basic intent and
28 purpose of the zoning and land use regulations. As such, approval of this application, is in character
29 with the surrounding uses, and would be consistent with the Village's Comprehensive Plan. The
30 proposed request and accompanying site plan are approved under section 33-311(A)(4)(a) to allow
31 plans entitled "Palmetto Bay Point Building," 17255 South Dixie Highway, Palmetto Bay, Florida as
32 prepared by David J. Cabarrocas/Architect, consisting of five (5) sheets, dated stamped received
33 10/15/2007, with the following conditions:
34

- 35 1. The applicant must meet the minimum requirements of Chapter 24 of the
36 Code of Miami-Dade County.
- 37 2. The application must meet the minimum requirements of all other applicable
38 departments/agencies as part of the building permit submittal process.
- 39 3. The sculptural element proposed in the site plan is subject to the compliance
40 with the Village's Art-in-Public-Places Ordinance No. 07-21. The proposed
41 public art work contained in the site plan is not approved as part of this
42 zoning resolution and shall not be deemed part of the approved site plan.
43
44

- 1
2 4. Prior to the issuance of the certificate of occupancy, all on-street parking,
3 landscaping and street lighting shall be installed as authorized by the
4 Departments of Planning, Zoning & Building Services and Public Works.
5 The applicant shall submit for approval a landscaping plan and street
6 improvements maintenance plan which shall be recorded in the public
7 records. On-street parking shall be non-exclusive. Appropriate signage, as
8 approved by the Village, shall be installed.
9
10 5. The applicant shall provide additional improvements along the north side of
11 SW 174th Street between S. Dixie Highway and SW 95th Avenue as provided
12 in the adopted FT&I Street Improvement Standards, which standards are
13 incorporated by reference into this resolution.
14
15 6. The applicant shall secure and record a long term, shared parking agreement
16 for a minimum of five (5) additional parking spaces on the adjacent parcel,
17 located at 17345 S. Dixie Highway.
18

19 The Village Council denies the request under the alternative standard found at section 33-
20 311(A)(4)(c), of the Miami-Dade County Code, as adopted by the Village of Palmetto Bay, as
21 no hardship was established. The site plan and accompanying off-site parking plan are
22 approved as provided herein. The attached site plan prepared by Cabarrocas is specifically
23 adopted and incorporated by reference into this resolution.
24

25 This is a final order.
26

27 Section 5. Record.

28 The record shall consist of the notice of hearing, the applications, documents submitted by
29 the applicant and the applicant's representatives to the Village of Palmetto Bay Department of
30 Planning and Zoning in connection with the applications, the Village recommendation and attached
31 cover sheet and documents, the testimony of sworn witnesses and documents presented at the
32 quasi-judicial hearing, and the tape and minutes of the hearing. The record shall be maintained by
33 the Village Clerk.
34

35 Section 6. This resolution shall take effect immediately upon approval.

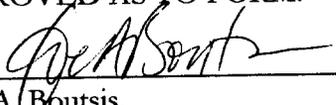
36 PASSED and ADOPTED this 14th day of January, 2008.

37
38 Attest:


Meighan Rader
Village Clerk


Eugene P. Flinn, Jr.
Mayor

1 APPROVED AS TO FORM:

2
3 
4 Eve A. Boutsis,
5 Nagin Gallop Figueredo, P.A.
6 Office of Village Attorney
7
8

9 FINAL VOTE AT ADOPTION:

10 Council Member Ed Feller Absent
11
12 Council Member Paul Neidhart YES
13
14 Council Member Shelley Stanczyk YES
15
16 Vice-Mayor Linda Robinson YES
17
18 Mayor Eugene P. Flinn, Jr. YES
19
20
21
22