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RESOLUTION NO. 08-44

ZONING APPLICATION: VPB-08-001 – 26-5-40 (District 2)

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; DENYING THE APPLICATION OF MARCELO AND MARCELA SUAREZ, 16155 SW 73RD PLACE FOR A NON-USE VARIANCE OF FRONT PROPERTY SETBACK; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the applicant made applications for a non-use variance of front set backs under 36-311(b) and/or (c), 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 May 12, 2008; and,

WHEREAS, the mayor and village council finds, based on substantial competent evidence in the record, that the application for the non-use variance is consistent with the Miami-Dade County comprehensive plan, but is not consistent with the applicable land development regulations; and,

WHEREAS, based on the foregoing finding, the mayor and village council determined to deny 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 May 12, 2008, in accordance with the Village's enacted "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.

On July 15, 1992, pursuant to Zoning Resolution 4-ZAB-253-92, the Metropolitan Dade County Zoning Appeals Board approved, with conditions, a non-use variance of certain setback requirements to permit the continued use of an already constructed tennis court and the associated 10 foot fence (where an 8 foot fence was permitted). The tennis court was approved with a nine (9) foot setback (where code required 20 feet) (and despite receiving prior zoning approval for a 10 foot setback) from the interior-side (south) property line and setback 45 feet (75 feet required; 50 feet previously approved) from the front (SE/ly property line) (Parcel B). The applicant also sought, and obtained approval to continue to use an existing 13.7' x 15.2' gazebo (adjacent to tennis court), which gazebo was setback 63 feet (75 feet required) from the front (SE/ly property line) (Parcel B).

On July 15, 1992, pursuant to Zoning Resolution 4-ZAB-253-92, the Board denied the applicant's request for a non-use variance of the County's subdivision regulations to permit the continued use of an existing wrought iron fence with concrete columns varying from

1 5.65' to 6.3' (6' permitted) and located within a mapped street, SW 73rd Place, where no
2 structures are permitted. This condition was corrected with appropriate building permits on
3 October 24th, 2007.
4

5 The subject property is located at 16155 SW 73 Place, Palmetto Bay, Florida. The
6 applicants, Marcelo and Marcela Suarez, requested a setback variance to allow a 720 sq. ft.
7 shed for the storage of lawn equipment to setback 8.95 feet from the front property line
8 where 75 feet is required. Under the Miami-Dade County Code, the narrowest portion of a
9 property is considered the front. For this property, the legal front would be the west side of
10 the site. In this case, the actual front of the property is the south. In either case, the front
11 and side setbacks cannot be met for this already constructed shed located within the legal
12 front setback. The applicant provided no testimony as to any hardship or necessity for the
13 shed to be constructed and placed less than 9 feet from the front property line.
14
15

16 Section 3. Conclusions of law.

17 In evaluating an application for a non-use variance of setback regulations, Section 33-311(b)
18 and/or (c) provides that the Village Council take into consideration, among other factors,
19 the extent to which:
20

21 Under 33-311(b), non-use variance standard requirements, whether the non-use variance
22 maintains the basic intent and purpose of the zoning, subdivision and other land use
23 regulations, which is to protect the general welfare of the public, particularly as it affects the
24 stability and appearance of the community and provided that the variance will be otherwise
25 compatible with the surrounding land uses and would not be detrimental to the community.
26 No showing of unnecessary hardship to the land is required.
27

28 Under the alternative standards for a non-use variance, 33-311(c) whether the variance will
29 not be contrary to the public interest, where owing to special conditions, a literal
30 enforcement of the provisions thereof will result in unnecessary hardship, and so the spirit
31 of the regulations shall be observed and substantial justice done; provided, that the non-use
32 variance will be in harmony with the general purpose and intent of the regulation, and that
33 the same is the minimum non-use variance that will permit the reasonable use of the
34 premises.
35

36 The non-use variance request, pursuant to 33-311(b) of the Code, was found not in keeping
37 with the existing development pattern in the area in that it is not compatible with the
38 surrounding zoning regulations that call for a larger front and/or side setback than provided.
39 Additionally, as there is no actual hardship, the criteria of the alternative non-use variance
40 provisions of 33-311(c) are also not met.
41

42 Section 4. Order.

43 The existing shed is not in keeping with the basic intent and purpose of the zoning
44 regulations. Therefore, pursuant to Section 33-311(b) and/or (c) of the Code, the
45 application for a non-use variance under application VPB-08-001 is denied.

1
2 Additional conditions.
3

- 4 1. This is a final order.
5
6 2. The Village council finds that the existing shed be removed and/or relocated to an
7 appropriate location on the property in compliance with zoning regulations and with
8 proper building permits within thirty (30) of a written and executed final decision by
9 the Village Council.
10

11 Section 5. Record.

12 The record shall consist of the notice of hearing, the applications, documents submitted by
13 the applicant and the applicant's representatives to the Village's Planning and Zoning in connection
14 with the applications, the county recommendation and attached cover sheet and documents, the
15 testimony of sworn witnesses and documents presented at the quasi-judicial hearing, and the tape
16 and minutes of the hearing. The record shall be maintained by the Village Clerk.
17

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

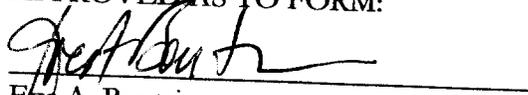
19 PASSED and ADOPTED this 23rd day of May, 2008.

20
21 Attest:

22 
23 Meghan Rader
24 Village Clerk
25

26 
27 Eugene P. Flinn, Jr.
28 Mayor
29

30 APPROVED AS TO FORM:

31 
32 Eve A. Boutsis,
33 Magin Gallop Figueredo, P.A.
34 Office of Village Attorney
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36 FINAL VOTE AT ADOPTION:

37 Council Member Ed Feller YES
38 Council Member Paul Neidhart YES
39 Council Member Shelley Stanczyk YES
40 Vice-Mayor Linda Robinson YES
41 Mayor Eugene P. Flinn, Jr. YES
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