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RESOLUTION NO. 08-126

ZONING APPLICATION 08-009

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; APPROVING THE APPLICATION OF BEN AND WIFE ORBY NWADIKE PURSUANT TO SECTION 33-311 OF THE MIAMI-DADE COUNTY CODE FOR A NON-USE VARIANCE OF REAR SETBACK REQUIREMENTS ON PROPERTY ZONED MM, MIXED-USE MAIN STREET AT THE ADDRESS OF 9770 WAYNE AVENUE, PALMETTO BAY, FLORIDA; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the applicant made an application for a non-use variance of rear setback requirements at 9770 Wayne Avenue, Palmetto Bay, Florida, 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 the Deering Estate Visitor's Center, 16701 SW 72nd Avenue on December 8th, 2008; and,

WHEREAS, the Mayor and Village Council find, based on substantial competent evidence in the record, that the application pursuant to section 33-311, of the Miami-Dade County Code, as adopted by the Village relating to the non-use rear setback variance request is consistent with the Village's Comprehensive Plan and the applicable land development regulations; and,

WHEREAS, based on the foregoing finding, the Mayor and Village Council determined to grant the application, 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 application was held on December 8th, 2008 in accordance with the Village's "Quasi-judicial hearing procedures" Ordinance, found at 2-105, of the Village's Code of Ordinances. Pursuant to the hearing, the Mayor and Village Council make the following findings of fact, conclusions of law and order.

Section 2. Findings of fact.

The subject property is located at 9770 Wayne Avenue, Palmetto Bay, Florida. The applicants, Mr. and Mrs. Nwadike, have submitted an application requesting a non-use variance of rear setback requirements to permit an encroachment of 14 inches, allowing the single family home to setback 23'10" from the rear setback (south) property line where 25' is required on a property zoned MM,

1 Mixed-Use Main Street. The nonuse variance will allow the property to keep the addition, if it meets
2 all Building Code requirements and have the property re-converted into a single-family home.
3

4 The surrounding area is characterized by semi-professional office buildings to the north, a
5 single family residence to the east, an apartment building to the south and east, and an auto shop
6 immediately to the west.
7

8 Neighborhood services would not be impacted by this application which solely requests a
9 non-use variance of the rear setback requirement from 25' to 23'-10", a 1'-2" variance.
10

11 The property is located at 9770 Wayne Avenue, Palmetto Bay, Florida. The applicant, Ben
12 Nwadike & wife Orby, have submitted an application requesting a setback variance to allow for an
13 existing 669 sq. ft. room addition to a single family home to setback 23'-10" from the rear setback
14 (south) property line where 25' is required.
15

16 The Division of Code Compliance received an anonymous complaint on January 11, 2007,
17 of an illegal conversion at this property. The Division of Code Compliance inspected and found an
18 addition to the home was constructed without a building permit and the single-family home being
19 used as a multi-family rental property. The Miami-Dade County Property Appraiser's profile for this
20 property indicates taxes are assessed on a 10,000 sq.ft. lot with a one-unit structure, 1,417 sq.ft. in
21 size, constructed on it in 1946. In 2008, the applicant submitted a site plan with a building permit
22 application indicating a 1,700 sq.ft. structure is existing on the property, a difference of 253 sq.ft.
23 more than that shown on the tax records. There is a Code Compliance case pending against this
24 property for construction of an addition to a residential property without building permits. This
25 addition is the subject of the setback variance request as it was constructed within the required rear
26 setback. This property is also the subject of code enforcement action for illegally converting the
27 single family residence into a multifamily property comprising three dwelling units. Use of the
28 property for multifamily purposes impacts neighborhood services including increased demand for
29 potable water; increased demand on the septic tank serving this property for sanitary sewer
30 collection and disposal; increased generation of solid waste; increased generation of recyclables; and,
31 increased on-site parking demands.
32

33 On January 17, 2007, the applicant was issued a courtesy warning by the Division of Code
34 Compliance for failure to obtain a building permit for the addition which is the subject of this
35 variance request. On August 8, 2007, the applicant was issued two citations or: 1) failure to obtain a
36 building permit for the addition and, 2) converting a single-family home into a 3-unit multi-family
37 structure without zoning or building approval. The applicant appealed the citations to the Village of
38 Palmetto Bay's Special Master.
39

40 Several continuances were granted by the Special Master, as requested by the applicant, in an
41 effort to work with the applicant to obtain a building permit. A building permit was not able to be
42 obtained because the setback requirements cannot be met. On May 20, 2008, Mr. Nwadike was
43 found guilty by the Special Master for residential improvements made without required building
44 permits and inspections and for unlawful conversion of a dwelling per code section 8-1 of the Miami
45 Dade County Code and 105.1 Florida Building Code. The Special Master's Order stipulated that if

1 the property remained in non-compliance as of October 20, 2008, a daily running fine of \$100
2 would be assessed. This, in fact, is the case. As of December 8th, 2008, the fine totals an amount of
3 \$4,800.
4

5 In an effort to assist Mr. Nwadike, the Planning & Zoning Department met with him several
6 times prior to the Final Order by the Special Master to discuss the options available. Mr. Nwadike
7 conveyed to the Village, through his attorney, that he was attempting to remedy the code violations
8 by two actions: returning the 3-unit structure occupied by three individual tenants to a single family
9 home and seeking a variance of setback requirements. An inspection on November 19th, 2008,
10 found that the building is still in use as a multi-family building. Multi-family use at this property is
11 today only allowed under FT&I zoning in conjunction with another use. An option to cure the
12 setback requirement included applying for an Administrative Variance to allow a variance of up to
13 25% (to 18.75') of setback requirements, subject to a signoff by adjacent neighbors. Mr. Nwadike
14 was unable to obtain the neighbors signoff. In this case, the applicant must then apply for a public
15 hearing for a non-use variance of setback requirements, which Mr. Nwadike has done through this
16 application.
17

18 The applicant has submitted a site plan showing the existing room addition, along with a
19 building permit application. The site plan shows three entries into the home, three refrigerator
20 electrical connections and three sink locations in addition those in the bathrooms. Two existing
21 ranges have been removed on the proposed site plan.
22

23 The non-use variance request maintains the basic intent and purpose of the zoning,
24 subdivision and other land use regulations, and would not affect the stability and appearance of the
25 community. The general welfare does not appear to be affected by the variance request. No
26 showing of unnecessary hardship to the land is required when considering the request under 33-
27 311(A)(4)(b) and the criteria of these provisions are met. As there is no actual hardship, the criteria
28 of the alternative non-use variance provisions of 33-311(A)(4)(c) are not met and these provisions
29 do not apply.
30

31 Mr. Ed. Ludovici, counsel for the applicants, testified that the unpermitted addition to the
32 single family home has been in existence since at least 1995, which is prior to the applicants'
33 ownership. Mr. Ludovici submitted into evidence three documents: the 1995 closing document
34 reflecting that Mr. Nwadike was receiving a proration on the rents for the existing three units
35 located at the site (from the illegal conversion that occurred prior to his client's ownership); the deed
36 for purchase dated 1995 and a 1995 aerial map reflecting the current layout of the property. Mr.
37 Ludovici testified that his client was an innocent purchaser unaware that the property had been
38 illegally subdivided. Mr. Ludovici, on his client's behalf, agreed to all the conditions raised by staff,
39 and to a 13th condition raised by Council Person Shelley Stanczyk to require an inspection after a
40 year's time, to ensure that the property, once it remedies the outstanding issues, is being used as a
41 single family home. The inspection may occur any time within a 12 month period, without notice,
42 and will be initiated by the Village. Mr. Nwadike was present but did not testify.
43

44 The public hearing was opened and the following persons testified:
45

1 Tim McGiver, the manager of Morningside Apartments, located adjacent to the applicants'
2 property at 9785 SW 181st Terrace, that there have been numerous violations at the applicants' site.;
3 that applicant have not been a good neighbor as the property has deteriorated, that there are sheds
4 in poor condition, abandoned animals, and junk and debris scattered through the property. Mr.
5 McGiver presented a petition signed by all the tenants of the Morningside Apartments, 18 units,
6 requesting that the variance be denied.

7
8 The public hearing was closed. Council asked questions relating to the number of tenants,
9 condition of the site, intent to come into compliance with all code regulations, and timetable for
10 doing so.

11
12 Section 3. Conclusions of law.

13 The adopted 2005 Village of Palmetto Bay Comprehensive Plan, Future Land Use Map
14 designates the site as Neighborhood Mixed-Use. This designation accommodates convenience
15 business/retail uses and services within or near neighborhoods for day-to-day living needs with
16 relatively low traffic generation. Controlled on-street parking is allowed and off-street parking in the
17 rear of buildings is highly encouraged. The vertical and horizontal integration of mixed uses is
18 permitted, subject to meeting the design parameters of the zoning district.

19
20 In evaluating an application for a Non-Use Variance of Parking Regulations, Section 33-
21 311(A)(4)(b) and (c) provides that the Village Council take into consideration, among other factors,
22 the extent to which:

23
24 General Requirements under 33-311:

- 25
26 1. The development permitted by the application, if granted, conforms to the Comprehensive
27 Plan for the Village of Palmetto Bay, Florida; is consistent with applicable area or neighborhood
28 studies or plans, and would serve a public benefit warranting the granting of the application at the
29 time it is considered;
- 30
31 2. The development permitted by the application, if granted, will have a favorable or
32 unfavorable impact on the environmental and natural resources of the Village of Palmetto Bay,
33 including consideration of the means and estimated cost necessary to minimize the adverse impacts;
34 the extent to which alternatives to alleviate adverse impacts may have a substantial impact on the on
35 the natural and human environment; and whether any irreversible or irremediable comment of
36 natural resources will occur as a result of the propose development;
- 37
38 3. The development permitted by the application, if granted, will have a favorable or
39 unfavorable impact to the economy of the Village of Palmetto Bay, Florida;
- 40
41 4. The development permitted by the application, if granted, will efficiently use or unduly
42 burden water, sewer and solid waste disposal;
- 43

1 5. The development permitted by the application, if granted, will efficiently use or unduly
2 burden or affect public transportation facilities, including mass transit, roads, streets and highways
3 which have been constructed or planned and budgeted for construction, and if the development is
4 or will be accessible by public or private roads, streets or highways.
5

6 Specific requirements under 33-311(A)(4)(b), non-use variance standard requirements: the non-use
7 variance maintains the basic intent and purpose of the zoning, subdivision and other land use
8 regulations, which is to protect the general welfare of the public, particularly as it affects the stability
9 and appearance of the community and provided that the variance will be otherwise compatible with
10 the surrounding land uses and would not be detrimental to the community. No showing of
11 unnecessary hardship to the land is required.
12

13 Alternative standards under alternative non-use variance standard of 33-311(A)(4)(c) which requires
14 that the variance will not be contrary to the public interest, where owing to special conditions, a
15 literal enforcement of the provisions thereof will result in unnecessary hardship, and so the spirit of
16 the regulations shall be observed and substantial justice done; provided, that the non-use variance
17 will be in harmony with the general purpose and intent of the regulation, and that the same is the
18 minimum non-use variance that will permit the reasonable use of the premises.
19

20 Section 4. Order.

21

22 The applicant's request for a non-use variance of the rear setback requirement is approved
23 under 33-311(A)(4)(b), with conditions. The variance request will allow the existing addition to the
24 residence to remain. Under no circumstances is this variance to permit any future additions or
25 variances to existing setbacks. Approval of the rear setback variance in no way grants approval of
26 the multifamily use of the single-family residence.
27

28 The conditions attached to the approval of the non-use setback variance are based on the
29 applicant's intention to convert the multifamily structure back to a single-family residence, as shown
30 on the plans entitled "Proposed Remodeling Addition for Ben & Orby Nwadike" as prepared by
31 Pawa Architects & Engineers, Inc. consisting of fourteen (14) sheets, dated stamped received
32 10/20/2008, and are as follows:
33

- 34 1. Use of the property for multifamily occupancy shall cease within thirty (30)
35 days from the date of adoption of the zoning resolution related to this application.
- 36 2. A building permit(s) for the addition shall be obtained within thirty (30) days
37 from the date of adoption of a zoning resolution related to this application.
- 38 3. The west front entrance shall be removed and the plans revised.
- 39 4. The floor plans for the proposed family room/study and proposed master
40 bedroom shall be revised and shall not include electrical connections or outlets that
41 would allow these rooms to include kitchen facilities and possible use as separate
42 residential units within the single-family residence.
- 43 5. Windows, doors and stucco for the addition shall be as indicated on the
44 plans dated 10/20/2008.

1 6. A residential driveway and two (2) parking spaces shall be provided and
2 indicated on the plans. The driveway and parking shall be hard-surfaced with
3 continuous brick, asphalt, concrete, concrete pavers, or stabilized alternative parking
4 surfaces maintained in a smooth, well-graded condition, in accordance with Chapter
5 30, Division 70, "Parking and Loading Standards," of the Village's Land
6 Development Code.

7 7. The unit lettering designating three (3) separate dwelling units as "A," "B"
8 and "C" shall be removed. The permitted use of the residence shall be single-family.

9 8. The exterior of the residence shall be improved to eliminate the deteriorated
10 conditions and lot maintenance shall be performed to eliminate the neglected
11 appearance of the property.

12 9. The applicant must meet the minimum requirements of Chapter 24 of the
13 Code of Miami-Dade County.

14 10. The application must meet the minimum requirements of all other applicable
15 departments/agencies as part of the building permit submittal process.

16 11. Conditions numbered 3 through 10 shall be met not later than 180 days from
17 date of issuance of a building permit.

18 12. Failure to maintain compliance with any of the above required conditions
19 will result in the approved development order adopted by zoning resolution related
20 to this application being deemed null and void and will result in the immediate
21 issuance of a civil citation notice for each condition violated. Each civil citation
22 issued will require payment of a daily monetary fine in the amount of \$250.00.

23 13. The applicant's consent to an inspection 12 months following the final
24 building inspection pursuant to the building permit at paragraph 2 above to ensure
25 that the property remains in compliance with the conditions outlined above, at
26 paragraphs 1-10.

27
28 Applicants have stipulated their agreement to all 13 conditions. Use of the property is to
29 meet the requirements and policies of all other applicable departments/agencies as part of the
30 building permit submittal process.

31
32 The Village Council denies the request pursuant to section 33-311(A)(4)(c). The request shall
33 proceed forward under section 33-311(a)(4)(b).

34
35 This is a final order.
36

1 Section 5. Record.

2 The record shall consist of the notice of hearing, the application, documents submitted by
3 the applicant and the applicant's representatives to the Village of Palmetto Bay Planning and Zoning
4 Department in connection with the applications, the Village's recommendation and attached cover
5 sheet and documents, the testimony of sworn witnesses and documents presented at the quasi-
6 judicial hearing, and the tape and minutes of the hearing. The record shall be maintained by the
7 Village Clerk.
8

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

10 PASSED and ADOPTED this 8th day of December, 2008.

11
12 Attest: Meighan Rader
13 Meighan Rader
14 Village Clerk
15

Eugene P. Flinn, Jr.
Eugene P. Flinn, Jr.
Mayor

16
17 APPROVED AS TO FORM:
18
19
20 Eve A. Boutsis
21 Eve A. Boutsis,
22 Nagin Gallop Figueredo, P.A.
23 Office of Village Attorney
24

- 25 FINAL VOTE AT ADOPTION:
- 26 Council Member Ed Feller YES
 - 27
 - 28 Council Member Howard Tendrich YES
 - 29
 - 30 Council Member Shelley Stanczyk YES
 - 31
 - 32 Vice-Mayor Brian Pariser YES
 - 33
 - 34 Mayor Eugene P. Flinn, Jr. YES
 - 35
 - 36