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RESOLUTION NO. 09-85

ZONING APPLICATION [VPB-08-008]

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; APPROVING THE APPLICATION OF GEORGE A & SUSANNAH PUSTAI FOR A NON-USE VARIANCE OF SETBACK REQUIREMENTS UNDER ORDINANCE 09-03 THE VILLAGE'S SHED AMNESTY ORDINANCE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the applicant made applications for a non-use variance of the setback requirements, as described in the Village's Department of Planning and Zoning Recommendation, 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 Center on October 14, 2009; and,

WHEREAS, the Mayor and Village Council finds, based on substantial competent evidence in the record, that the application for a non-use variance under Ordinance 09-03 The Village's Shed Amnesty Program 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 applications was held on October 14, 2009, 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.

The Applicants, George A & Susannah Pustai, sought a non-use variance of the property located at 9152 SW 182nd Street, Palmetto Bay, Florida. The applicants submitted an application requesting a non-use variance of setback requirements to allow an existing shed (14' x 18' / 252 sq. ft.) to have a setback of 5.2' where 20' is required from the (west) side street property line on a property zoned R-1.

On February 2, 2009, the Village Council, pursuant to Ordinance Number 09-03 (known as "the Shed Amnesty Ordinance"), provided for an 18 month shed amnesty program that would allow existing nonconforming sheds to be permitted provided certain conditions are met. The Village Council recognized that many of the nonconforming sheds were built on residential properties

1 without permits; and many of the sheds had been built after Hurricane Andrew or other hurricane
2 events in an effort to secure construction materials and personal property due to residential damage
3 caused by the events. In addition, the Village Council acknowledged that they could not determine
4 whether the sheds were built due to the aftermath of Hurricane Andrew or other hurricane events
5 that occurred over the past 17 years.

6
7 Pursuant to Ordinance Number 09-03, property owners could seek a simplified after-the-fact permit
8 for sheds under two circumstances:

- 9
10 1. Sheds under 150 sq. ft. and more than 3' from the property line could obtain an
11 administrative shed variance; or
12 2. Shed over 150 sq. ft. +/- and less than 3' from the property line the applicant can seek a
13 variance.
14

15 The shed moratorium ordinance facilitates the legalization and permitting of the non-conforming
16 sheds to ensure that they comply with the Florida Building Code. The current applicants wish to
17 participate in the amnesty program and bring the existing nonconforming shed into compliance. The
18 shed is located on the southwest corner of the property, 5.2' east of the (west) property line adjacent
19 to a 6' high wood fence. The properties immediately to the north, east, south and west are
20 surrounded by single-family homes several of which have sheds in similar locations. In fact, the
21 property to the west also has a shed in a similar location, literally right behind the applicants' shed.
22 This area is zoned by the Village as R-1. The shed does not qualify for the shed administrative
23 variance process as it exceeds 150 sq. ft. in size.
24

25 The variance request, pursuant to Section 33-311(A)(4)(b), Miami-Dade County Code, is consistent
26 with the existing development pattern surrounding the area. In addition, the area is also compatible
27 with the surrounding zoning and land use regulations. Since there is no actual hardship, the criteria
28 of the alternative non-use variance provisions of Section 33-311(A)(4)(c), Miami-Dade County
29 Code, have not been met.
30

31 The applicants submitted a survey showing the location of the existing shed. Approval of the
32 setback variance will allow the applicants to maintain the 14' x 18' shed on site.
33

34 The adopted 2005 Village of Palmetto Bay Comprehensive Plan and Future Land Use Map,
35 designates the site as Low Density Residential. (2.5 to 6 dwelling units (D.U.) per gross acre). There
36 are no government resources impacted including roadways, sewer and water. The sole impact may
37 be to adjacent neighbors due to the 5.2' setback request which could produce visual and noise
38 impacts.
39

40 In evaluating the application for a Non-Use Variance of Setback Regulations, the Village Council
41 took into consideration the requirements set forth in Section 33-311(A)(4)(b) Non-Use Variance
42 Standard, or the alternative Section 33-311 (A)(4)(c) Alternative Non-Use Variance Standard, of the
43 Miami-Dade County Code. The non-use variance standard requirements in Section 33-311
44 (A)(4)(b), Miami-Dade County Code, indicates that upon appeal or direct application in specific
45 cases to hear and grant applications for non-use variances from the terms of the zoning and
46 subdivision regulations, the Council (following a public hearing) may grant a non-use variance upon

1 demonstration by the applicant that the non-use variance request maintains the basic intent and
2 purpose of the zoning, subdivision and other land use regulations, which is to protect the general
3 welfare of the public, particularly as it affects the stability and appearance of the community and
4 provided that the variance will be otherwise compatible with the surrounding land uses and would
5 not be detrimental to the community. No showing of unnecessary hardship to the land is required.
6 For the purpose of this subsection of the Code, the term "non-use variance" involves matters such
7 as setback lines, frontage requirements, subdivision regulations, height limitations, lot size
8 restrictions, yard requirements, and other variances which have no relation to change of use of the
9 property in question.

10
11 The alternative non-use variance standard in Section 33-311(A)(4)(c), Miami-Dade County Code,
12 requires that the variance will not be contrary to the public interest, where owing to special
13 conditions, a literal enforcement of the provisions thereof will result in unnecessary hardship, and so
14 the spirit of the regulations shall be observed and substantial justice done; provided, that the non-
15 use variance will be in harmony with the general purpose and intent of the regulation, and that the
16 same is the minimum non-use variance that will permit the reasonable use of the premises.

17
18 After being sworn in, Planning & Zoning Director Julian Perez presented the recommendation of
19 staff to support the application and outlined the criteria used. Mr. Perez explained that he provided
20 individual notice to the neighbors of each application for amnesty under Ordinance 09-03. That
21 additional notice, beyond the notice required under the Village's Code of Ordinances was made a
22 part of the underlying record. Mr. Perez explained that the intent of Shed Amnesty process was to
23 establish an unbiased evaluation of each application consistent with the requirements set forth in
24 Village Ordinance No. 09-03. The application and field information were used by staff to determine
25 whether the applicant met both primary and secondary requirements. The summary of the
26 minimum requirements applied by staff are as follows: (1) Primary minimum requirements, include:
27 the applicant's location of the shed, and the ability to have enough space (minimum 1.5') between
28 the shed and property line in order to provide sufficient landscaping to screen the shed from public
29 view and from adjacent property owner's view; and (2) Secondary minimum requirements, which
30 include: the provision of a wooden fence at least 6' tall; sufficient landscaping provided by adjacent
31 property owner in the general area where the shed is located; adjacent principal structure and
32 auxiliary uses are 20' or more feet away from the shed; no opposition from the adjacent neighbor(s);
33 and the existing size and condition of the shed. An adjacent resident issued a letter recommending
34 approval of the shed variance application. The letter was placed on the record during the public
35 hearing. There were no opponents to the application.

36
37 The public hearing was then opened.

38
39 Thereafter, the Council deliberated and voted on the application, approving the application with the
40 conditions recommended by staff. Thereafter, the Village Council, moved to rehear the item.
41 Council Person Tendrich moved to re-hear the item; Vice Mayor Pariser, seconded the motion, and
42 the motion was approved 3-1 (Council Person Stanczyk voted no). The final decision of the
43 Council was Amended to include the provision, consistent with the Florida Building Code, that
44 should the structure be damaged or destroyed beyond 50% ["Level Three" demolition of existing
45 residential buildings as defined under the Florida Building Code at Section 405.1 (exceeds 50 percent
46 of the aggregate area of the building within any 12 month period)], that the variance for the existing

1 shed shall be abandoned, and the structure removed. The Applicant consented on the record to the
2 condition placed on the approval of the variance application. The final approval was amended to
3 include this condition. The amendment was moved by Council person Stanczyk and seconded by
4 Council Person Tendrich.

5
6 Section 3. Conclusions of law.

7
8 The Mayor and Village Council determined that the existing shed is in keeping with the basic intent
9 and purpose of the zoning and land use regulations. Approval of the application is in character with
10 the existing use of the property, and is consistent with the Village's Comprehensive Plan. The
11 application is approved pursuant to Section 33-311(A)(4)(b), and denied under Section 33-
12 311(A)(4)(c).

13
14 Section 4. Order.

15 Pursuant to Section 33-311(A)(4)(b), Miami-Dade County Code, The Mayor and Village Council
16 approve the application as represented under the survey entitled, George Pustai, 9152 SW 182nd
17 Street, Palmetto Bay, FL 33157, as prepared by Gary B. Castel Surveying, Inc., consisting of one (1)
18 sheet, dated stamped received October 10, 2008, with the following conditions:

19
20 1. The applicant is to comply with the requirements of all other applicable
21 departments/agencies as part of the Village of Palmetto Bay building permit submittal process and
22 all relevant state and local code requirements.

23
24 2. The applicant is to comply with the landscape screening requirements and all the
25 requirements imposed by the Village of Palmetto Bay under Ordinance Number 09-03 (Shed
26 Amnesty Ordinance).

27
28 3. Consistent with the Florida Building Code, should the structure be damaged or destroyed
29 beyond 50% ["Level Three" demolition of existing residential buildings as defined under the Florida
30 Building Code at section 405.1, -- exceeds 50 percent of the aggregate area of the building within any
31 12 month period], that the variance for the existing shed shall be abandoned, and the structure
32 removed.

33
34 The Applicant consented on the record to the conditions placed on the approval of the
35 variance application.


36
37 Section 5. Record.

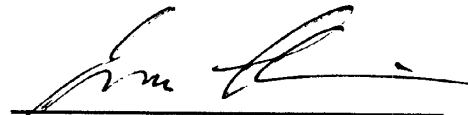
38 The record shall consist of the notice of hearing, the applications, documents submitted by
39 the applicant and the applicant's representatives to the Village's Department of Planning and Zoning
40 in connection with the applications, the county recommendation and attached cover sheet and
41 documents, the testimony of sworn witnesses and documents presented at the quasi-judicial hearing,
42 and the tape and minutes of the hearing. The record shall be maintained by the Village Clerk.

43
44 Section 6. This resolution shall take effect immediately upon approval.

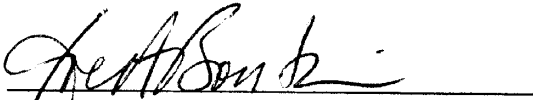
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PASSED and ADOPTED this 14th day of October, 2009.

Attest: 
Meghan Rader
Village Clerk


Eugene P. Flinn, Jr.
Mayor

APPROVED AS TO FORM:


Eve A. Boutsis,
Village Attorney

FINAL VOTE AT ADOPTION:

| | |
|---------------------------------|---------------|
| Council Member Ed Feller | <u>Absent</u> |
| Council Member Howard Tendrich | <u>YES</u> |
| Council Member Shelley Stanczyk | <u>NO</u> |
| Vice-Mayor Brian W. Pariser | <u>YES</u> |
| Mayor Eugene P. Flinn, Jr. | <u>YES</u> |