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RESOLUTION NO. 09-89

ZONING APPLICATION [VPB-09-005]

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; APPROVING THE APPLICATION OF ARTHUR L & LISA MONTERO-BLYER 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 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 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 Applicant, Arthur L & Lisa Montero-Blyer, sought a non-use variance of the property located at 14825 SW 82nd Avenue, Palmetto Bay, Florida. Pursuant to Sections 33-311(4)(b) and (c), Miami-Dade County Code, the applicants sought a non-use variance of setback requirements to allow two existing sheds where (Shed #1: 11.8' x 24.2' / 286 sq. ft.) has a setback of 4.09' where 20' is required from the (north) interior property line and 6.67' from the (east) property line where 7.5' is required. The second shed (Shed #2: 16' x 10.1' / 162 sq. ft.) has a setback of 3.39' from the (south) interior property line where 20' is required on a property zoned E-M. Both sheds exceed the shed size for an administrative shed variance.

1 On February 2, 2009, the Village Council, pursuant to Ordinance Number 09-03 (known as “the
2 Shed Amnesty Ordinance”), provided for an 18 month shed amnesty program that would allow
3 existing nonconforming sheds to be permitted provided certain conditions are met. The Village
4 Council recognized that many of the nonconforming sheds were built on residential properties
5 without permits; and many of the sheds had been built after Hurricane Andrew or other hurricane
6 events in an effort to secure construction materials and personal property due to residential damage
7 caused by the events. In addition, the Village Council acknowledged that they could not determine
8 whether the sheds were built due to the aftermath of Hurricane Andrew or other hurricane events
9 that occurred over the past 17 years.

10
11 Pursuant to Ordinance Number 09-03, property owners could seek a simplified after-the-fact permit
12 for sheds under two circumstances:
13

- 14 1. Sheds under 150 sq. ft. and more than 3’ from the property line could obtain an
15 administrative shed variance; or
- 16 2. Shed over 150 sq. ft. +/- and less than 3’ from the property line the applicant can seek a
17 variance.
18

19 The shed moratorium ordinance facilitates the legalization and permitting of the non-conforming
20 sheds to ensure that they comply with the Florida Building Code. The current applicants wish to
21 participate in the amnesty program and bring the existing nonconforming shed into compliance.
22

23 The applicants, Arthur L. & Lisa Montero Blyer, have submitted an application requesting a non-use
24 variance of setback requirements to allow two existing sheds where (Shed #1: 11.8’ x 24.2’/ 286’ sq.
25 ft.) has a setback of 4.09’ where 20’ is required from the (north) interior property line and 6.67’ from
26 the (east) property line where 7.5’ is required. The second shed (Shed #2: 16’ x 10.1’/ 162 sq. ft.)
27 has a setback of 3.39’ from the (south) interior property line where 20’ is required on a property
28 zoned E-M. As mentioned above, Shed #1 is located on the northeast corner of the property 4.09’
29 south of the (north) property line where 20’ is required and 6.67’ west of the (east) property line
30 where 20’ is required adjacent to a ficus hedge and a 6’ high wood fence to the north. Shed #2 is
31 located in the southwest corner of the property 7.06’ from the (east) rear property line where 7.5’
32 is required and 3.39’ from the (south) interior property line where 20’ is required and adjacent to a
33 ficus hedge to the east in a residential property to the south. The properties immediately to the
34 north, east, south and west are surrounded by single-family homes. This area is zoned by the Village
35 as E-M. The sheds do not qualify for the shed administrative variance process as they exceed 150
36 sq. ft. in size and has less than 3’ setback from the property line. This application is adjacent (west)
37 of another shed amnesty applicant who only has a 4” setback. The applicants have submitted a
38 survey showing the location of the existing sheds. Approval of the setback variance will allow the
39 applicants to maintain the 11.8’ x 24.2’ and the 16’ x 10.1’ sheds on site.
40

41 The adopted 2005 Village of Palmetto Bay Comprehensive Plan and Future Land Use Map,
42 designates the site as Estate Density Residential. (Less than 2.5 dwelling units (D.U.) per gross acre).
43 Neighborhood services would not be impacted by this application. This structure was constructed in
44 violation of required setbacks. The variance, if granted, would bring the structure into code
45 compliance.

1 In evaluating the application for a Non-Use Variance of Setback Regulations, the Village Council
2 took into consideration the requirements set forth in Section 33-311(A)(4)(b) Non-Use Variance
3 Standard, or the alternative Section 33-311 (A)(4)(c) Alternative Non-Use Variance Standard, of the
4 Miami-Dade County Code. The non-use variance standard requirements in Section 33-311
5 (A)(4)(b), Miami-Dade County Code, indicates that upon appeal or direct application in specific
6 cases to hear and grant applications for non-use variances from the terms of the zoning and
7 subdivision regulations, the Council (following a public hearing) may grant a non-use variance upon
8 demonstration by the applicant that the non-use variance request maintains the basic intent and
9 purpose of the zoning, subdivision and other land use regulations, which is to protect the general
10 welfare of the public, particularly as it affects the stability and appearance of the community and
11 provided that the variance will be otherwise compatible with the surrounding land uses and would
12 not be detrimental to the community. No showing of unnecessary hardship to the land is required.
13 For the purpose of this subsection of the Code, the term "non-use variance" involves matters such
14 as setback lines, frontage requirements, subdivision regulations, height limitations, lot size
15 restrictions, yard requirements, and other variances which have no relation to change of use of the
16 property in question.

17
18 The alternative non-use variance standard in Section 33-311(A)(4)(c), Miami-Dade County Code,
19 requires that the variance will not be contrary to the public interest, where owing to special
20 conditions, a literal enforcement of the provisions thereof will result in unnecessary hardship, and so
21 the spirit of the regulations shall be observed and substantial justice done; provided, that the non-
22 use variance will be in harmony with the general purpose and intent of the regulation, and that the
23 same is the minimum non-use variance that will permit the reasonable use of the premises.

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

42
43 The variance request, pursuant to Section 33-311(A)(4)(b), Miami-Dade County Code, was found to
44 be consistent with the existing development pattern surrounding the area. In addition, the area was
45 also found to be compatible with the surrounding zoning and land use regulations. Since no actual

1 hardship exists, the criterion for the alternative non-use variance provisions of Section 33-
2 311(A)(4)(c), Miami-Dade County Code, were found not to have been met.

3
4 The applicants have submitted a survey showing the location of the existing sheds. Approval of the
5 setback variance will allow the applicants to maintain the 11.8' x 24.2' and the 16' x 10.1' sheds on
6 site.

7
8 The public hearing was then opened. The applicant spoke. The Village Council deliberated and
9 discussed the concern of extending the use beyond the life of the existing structure and conditioned
10 the approval upon the elimination of the variance upon destruction of the structure by 50 percent or
11 more, as further delineated below.

12
13 Section 3. Conclusions of law.

14
15 The Mayor and Village Council determined that the existing shed is in keeping with the basic intent
16 and purpose of the zoning and land use regulations. Approval of the application is in character with
17 the existing use of the property, and is consistent with the Village's Comprehensive Plan. The
18 application is approved pursuant to Section 33-311(A)(4)(b), and denied under Section 33-
19 311(A)(4)(c).

20
21 Section 4. Order.

22 Pursuant to Section 33-311(A)(4)(b), Miami-Dade County Code, The Mayor and Village Council
23 approve the application as represented under the survey entitled, the survey entitled, survey entitled,
24 Arthur Blyer & Lisa-Blyer, 14825 SW 82nd Avenue, Palmetto Bay, FL 33158, as prepared by P(3)SM,
25 LLC., consisting of one (1) sheet, dated stamped received May 5, 2009, with the following
26 conditions:

27
28 1. The applicant is to comply with the requirements of all other applicable
29 departments/agencies as part of the Village of Palmetto Bay building permit submittal process and
30 all relevant state and local code requirements.

31
32 2. The applicant is to comply with the landscape screening requirements and all the
33 requirements imposed by the Village of Palmetto Bay under Ordinance Number 09-03 (Shed
34 Amnesty Ordinance).

35
36 3. Consistent with the Florida Building Code, should the structure be damaged or destroyed
37 beyond 50% ["Level Three" demolition of existing residential buildings as defined under the Florida
38 Building Code at Section 405.1, -- exceeds 50 percent of the aggregate area of the building within
39 any 12 month period], that the variance for the existing shed shall be abandoned, and the structure
40 removed.

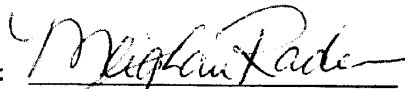
41
42 The Applicant consented on the record to the conditions placed on the approval of the
43 variance application.
44

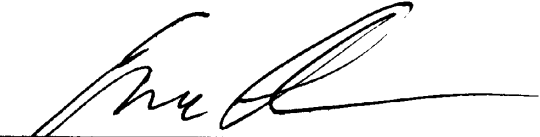
1 Section 5. Record.

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

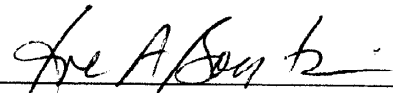
8 Section 6. This resolution shall take effect immediately upon approval.

9
10 PASSED and ADOPTED this 14th day of October, 2009.

11
12 Attest: 
13 Meighan Rader
14 Village Clerk


Eugene P. Flinn, Jr.
Mayor

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18 APPROVED AS TO FORM:

19
20 
21 Eve A. Boutsis,
22 Village Attorney

23
24
25
26 FINAL VOTE AT ADOPTION:

27
28 Council Member Ed Feller Absent
29
30 Council Member Howard Tendrich YES
31
32 Council Member Shelley Stanczyk YES
33
34 Vice-Mayor Brian W. Pariser YES
35
36 Mayor Eugene P. Flinn, Jr. YES
37
38