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**RESOLUTION NO. 2010-89**

ZONING APPLICATION VPB-10-023

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; GRANTING THE VARIANCE REQUEST OF APPLICANT DEERING PROPERTIES, LLC, LOCATED AT 7290 SW 168<sup>TH</sup> STREET, PALMETTO BAY, FLORIDA, FOR A VARIANCE TO CONSTRUCT A MONUMENT SIGN TO SETBACK 1 FOOT FROM THE WEST SIDE OF THE PROPERTY LINE WHERE 11.08 FEET IS REQUIRED, AND A REDUCTION IN THE LANDSCAPING REQUIREMENTS AT THE BASE OF THE SIGN TO 1 FOOT FROM THE WEST SIDE OF THE PROPERTY LINE WHERE 3 FEET IS REQUIRED ON AN PARCEL ZONED B-2, BUSINESS DISTRICT, AS PROVIDED FOR UNDER SECTION 30-30.6, OF THE VILLAGE'S CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, applicant is requesting a variance of signage setback and sign "base" landscape requirements; and,

WHEREAS, Pursuant to Section 30-30.6 of the Village of Palmetto Bay's Land Development Code (LDC), the applicant is requesting a variance of signage setback requirements to permit a monument sign (10.7 feet in height) 90 square feet in size to setback 1 foot from the west property line where 11.08 feet is required and a reduction of landscape requirements at the base of the sign to 1 foot from the west property line where 3 feet is required on a property zoned B-2, Business District; and ,

WHEREAS, Planning and Zoning Department issued a recommendation of approval of the setback variance, and landscaping variance for the monument sign; and,

WHEREAS, the Village Council of the Village of Palmetto Bay conducted a quasi-judicial hearing on the application at the Deering Estate on September 20, 2010; and,

WHEREAS, the Mayor and Village Council find, based on substantial competent evidence in the record, that the application pursuant to Section 30-30.6 of the Code relating to the above requests, find that the application, is consistent with the Village's Comprehensive Plan and does comply with 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:



1  
2 The applicant's property is located at 7290 SW 168 Street, Palmetto Bay, Florida. Pursuant to  
3 Section 30-30.6, of the Village of Palmetto Bay's Code, the applicant is requesting a variance of  
4 signage setback requirements to permit a monument sign (10.7 feet in height) 90 square feet in size  
5 to setback 1 foot from the west property line where 11.08 feet is required and a reduction of  
6 landscape requirements at the base of the sign to 1 foot from the west property line where 3 feet is  
7 required on a property zoned B-2, Business District.  
8

9 The installation of a monument sign on site would provide a list of existing tenants while creating  
10 greater visibility for the shopping center. The applicant has an existing pole sign that will be  
11 removed since pole signs are no longer permitted. The property is currently cluttered with multiple  
12 banners advertising the tenants of the center. The applicant wishes to consolidate and improve  
13 signage visibility with one free standing monument sign advertising all tenants within the center.  
14 The applicant is unable to accommodate the monument sign without seeking a variance due to the  
15 natural restrictions found on site.  
16

17 Other alternative locations were looked into by staff and the applicant. The front and side street of  
18 the property has a dense tree canopy consisting of protected tree species such as *Quercus Virginia*  
19 (*Oak, Live*). In an effort to preserve the tree canopy in the immediate area as indicated in Section 30-  
20 100 entitled Environmental Regulation of the Village Code, staff recommends the proposed sign  
21 location as indicated on the site plan, dated stamped received August 20, 2010, which would reduce  
22 the setback to 1 foot, which has been determined to be the minimum variance request possible  
23 without adversely effecting the existing oaks and ground cover on site.  
24

25 The public hearing was opened and Mr. Jerry Proctor, applicant's legal council, briefed the Mayor  
26 and Council on the intent of the application. Mr. Erik Tollberg, a Village resident spoke on the  
27 matter.  
28  
29

30 Section 3. Standard of Review.  
31

32 On December 2009, the Village Council adopted Division 30-30 of the LDC, relating to  
33 "Development Approval Procedures." Section 30-30.6, entitled "Variances" governs the process  
34 for addressing a variance request. The Village defined a variance as "a relation of the terms of  
35 Chapter 30 (Land Development Code Regulations), due to an unnecessary and undue hardship  
36 when relation of terms is not contrary to the public interest and results from conditions peculiar to  
37 the property and not the result of the actions of the applicant that may result from a literal  
38 enforcement of Chapter 30." In short, the Village has adopted a strict hardship standard for  
39 reviewing a variance request. The Village Council specifically identified permitted variances at  
40 subsection (b), and prohibited variances at subsection (c).  
41

42 In Section 30-30.6(b) of the Code, setback and landscaping variances are authorized to be granted by  
43 the Village Council, after a quasi-judicial public hearing.  
44

1 According to Section 30-30.6(c) of the Code, the Village Council may not grant a variance to allow a  
2 prohibited use, or one that is contrary to the Comprehensive Plan or Section 30-30.6 of the Code.  
3 Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall  
4 a variance be granted because of the presence of non-conformities in the zoning district or uses in  
5 an adjoining zoning district or because of prior variances granted. Similarly, a variance shall not be  
6 granted which increases nor has the effect of increasing density or intensity of a use beyond that  
7 permitted by the Comprehensive Plan or Chapter 30 of the Code.  
8

9 Pursuant to Section 30-30.6(e) of the Code, the Village Council may after public hearing, adopt a  
10 written resolution granting, granting with conditions or denying the variance request. The setback  
11 and landscaping variances will be jointly reviewed for consistency with the criteria set forth in  
12 Section 30-30.6(e) of the Code.  
13

14 (1) That the variance is in fact a variance allowed in this Division and is within the province of  
15 Village Council.  
16

17 The Village Council finds that the setback and landscaping variances requested are allowed and  
18 within the province of the Village Council. The applicant faces an unnecessary and undue hardship.  
19 The request is not contrary to the public interest and results from conditions peculiar to the  
20 property. The variance requests are not the result of the actions of the applicant. The hardship is  
21 not based upon financial reasons.  
22

23 (2) Existence of special conditions or circumstances. That special conditions and circumstances  
24 exist which are peculiar to the land, structure, or building involved and which are not applicable to  
25 other lands, structures, or buildings in the same zoning district.  
26

27 The Village Council finds that the northern and western boundary of the site contains a dense tree  
28 canopy consisting of native oaks and ground cover of which may not be impacted due to the  
29 Natural Forest Community designation (See: County Resolution R-1764-84), Section 30-100 of the  
30 Village Code, and Chapter 24 of the County Code. As such this area may not be utilized. The natural  
31 areas create the hardship due to the property condition on site.  
32

33 (3) That the special conditions and circumstances do not result from the actions of the  
34 applicant.  
35

36 The Council finds that there is a special condition on site caused by the existing dense tree canopy  
37 on the northern and western edge of the property. Per DERM, the vast majority of the trees and  
38 undercover are protected. The properties to the south and east of the subject property are a  
39 designated protected pine rock preserve forested area.  
40

41 (4) That granting of the variance requested will not confer on the applicant any special privilege  
42 that is denied by Chapter 30 to other lands, buildings, or structures in the same zoning district.  
43

1 The Council approves the variance to install a monument sign. The monument sign will replace the  
2 existing pole sign which is no longer permitted under the Village Code as per code and would be the  
3 minimum variance needed so as to not adversely affect the existing oaks and ground cover.

4  
5 (5) Financial difficulties or economic hardship shall not be a factor for determining whether a  
6 variance should be granted.

7  
8 The Council finds that no financial or economic hardships related to this application were taken into  
9 consideration.

10  
11 (6) That literal interpretation of the provisions of Chapter 30 would deprive the applicant of  
12 rights commonly enjoyed by other properties in the same zoning district under the terms of Chapter  
13 30 and would work unnecessary and undue hardship on the applicant. The purchase of property  
14 which has an illegal nonconformity with Chapter 30 shall not be considered a hardship for the  
15 granting of a variance, nor shall conditions peculiar to the property owner be considered.

16  
17 The Council finds that the physical limitations of the site, adjacent to historic Old Cutler Road, the  
18 Deering Estate and the on site dense tree canopy on the western and northern perimeter of the  
19 property limits the property owner's options in the placement of the sign. The applicant has an  
20 obsolete, pre-existing pole sign, which type of sign is now precluded under the zoning code.

21  
22 In 2008, the applicant received a parking variance to accommodate additional restaurants. In order  
23 to adequately advertise the existing businesses, the applicant needs to install a new conforming  
24 monument sign which would eliminate having numerous signs/banners at the site. The monument  
25 sign would replace the various temporary signs with one free standing sign advertising all tenants  
26 within the center.

27  
28 The Council's approval of the signage setback and sign base landscape will enable the applicant to  
29 better manage the area adjacent to the natural forest community while meeting the advertisement  
30 needs of the Center.

31  
32 (7) That the variance granted is the minimum variance that will make possible the reasonable  
33 use of the land, building, or structure.

34  
35 The requested variances will have a minimum adverse impact on the existing tree canopy and native  
36 ground cover in the immediate area.

37  
38 (8) That the grant of the variance will be in harmony with the general intent and purpose of the  
39 comprehensive plan and Chapter 30 of the Code, and that the variance will not be injurious to the  
40 area involved or otherwise detrimental to the public welfare.

41  
42 Council finds that the request will be in harmony with the general intent and purpose of the  
43 Comprehensive Plan and Chapter 30 of the LDC. The scale, height, and size are appropriate and  
44 compatible with the commercial area and limitations of signage along Old Cutler Road.

1 (9) In granting any variance, Village Council may prescribe appropriate conditions to mitigate  
2 the proposed variance and to ensure safeguards in conformity with the Comprehensive Plan and  
3 Chapter 30 of the LDC or any other duly enacted ordinance. Violation of conditions and safeguards,  
4 when made a part of the terms under which the variance is granted, shall be deemed a violation of  
5 this chapter and shall nullify the variance development approval.  
6

7 The Council approves the request with conditions based on the Council's evaluation and  
8 understating of the technical and non-technical aspects of the application. Applicant has agreed to  
9 the imposed conditions. The conditions provide clear guidance to mitigate the potential impacts  
10 created by the proposed variances. The Council's recommended conditions will augment or revise  
11 the conditions proposed by the Planning Department's staff.  
12

13 According to Section 30-30.6(f) of the Code, once a written decision is made by the Village Council,  
14 that resolution shall be recorded in the public records. The resolution granting a variance shall be  
15 deemed applicable to the development for which it is granted and not to the individual applicant,  
16 provided that no resolution granting a variance shall be deemed valid with respect to any use of the  
17 premises other than the use specified in the application for a variance development approval (See:  
18 Section 30-30.6(g) of the Code). As with all applications, if a variance is granted, the development  
19 approval shall be valid for 24 months from the date of approval, or that date approved by the  
20 Village Council, if a longer period is authorized during the public hearing (See: Section 30-30.2(k) of  
21 the Code). In short, Section 30-30.2(k) of the Code requires that the variance be utilized,  
22 constructed, if applicable, within the two year period.  
23

24 Section 4. Conclusions of law.

25 1. The Application is in compliance with the adopted 2005 Village of Palmetto Bay  
26 Comprehensive Plan, and Future Land Use Map.  
27

28 2. The standard of review for a variance is found at Division 30-30.6 of the Village's  
29 Land Development Code. That the Applicant's request for a setback variance is in compliance with  
30 the applicable hardship standards.  
31

32 3. The Council approves the variance of signage setback and landscape requirements  
33 for a monument sign (10.7 feet in height) 90 square feet in size. The Council finds that the  
34 proposed variance is in keeping with the basic intent and purpose of the zoning and land use  
35 regulations. As such, approval of this application is in character with the surrounding uses, and  
36 would be consistent with the Village's Comprehensive Plan.  
37

38 Section 5. Order.  
39

40 The Village Council approves the proposed plans entitled "Old Cutler Market Alterations", 7290  
41 SW 168th Street, Palmetto Bay, FL 33157, consistent with Section 30-30.6 of the Code. Consisting  
42 of one sheet dated stamped received August 16, 2010, with the following conditions:  
43

- 1           1.       The applicant is to comply with the requirements of all other applicable departments  
2           and agencies as part of the Village of Palmetto Bay's building permit submittal process.  
3
- 4           2.       The application must meet the minimum requirements of Chapter 24 of the Code of  
5           Miami-Dade County.  
6
- 7           3.       The preservation buffer on the subject site is part of a County designated Natural  
8           Forest Community (NFC). The NFC designation was placed on pine rockland and  
9           hardwood hammock habitats by an act of the Miami-Dade County Board of County  
10          Commissioners via Resolution No.: R-1764-84. The NFC designation provides for the  
11          preservation and protection of these habitats and a permit from DERM shall be required for  
12          any work within NFCs.  
13
- 14          4.       The NFC preservation buffer area must be indicated on the zoning site plan and  
15          shall include the full extent of the remaining NFC on the subject site, including areas within  
16          the site and right-of-way areas on SW 168 St (belonging to Palmetto Bay) and on Old Cutler  
17          Road (belonging to Miami-Dade County).  
18
- 19          5.       All past un-permitted work within the NFC preserve area that is determined to be  
20          permissible may be addressed through the issuance of an after-the-fact permit from DERM.  
21          Said permit may also include permission to install the new proposed signage that may  
22          ultimately be approved by this zoning variance.  
23
- 24          6.       To ensure compliance with DERM NFC regulations, it is recommended that the  
25          approval of any future zoning and/or construction permit approvals for the subject site be  
26          contingent on an approval from DERM's Forest Resources Program.  
27
- 28          7.       Any future work in the NFC preservation area, including but not limited to sign  
29          installation or removal, landscape installation or removal, shall require prior approval from  
30          DERM's Forest Resources Program.  
31
- 32          8.       The existing banners used to advertise the businesses located on site must be  
33          removed within 30 days after the building permit is approved by the Village of Palmetto Bay  
34          Building Department.  
35
- 36          9.       The applicant shall modify the proposed monument sign to incorporate additional  
37          safety features consistent with the basic principles set forth in "Crime Prevention Through  
38          Environmental Design."  
39
- 40          10.       Banners for tenants shall be limited to four (4) special event permits per tenant/per  
41          calendar year as to prevent signage clutter within the property boundaries. Banners shall not  
42          be allowed within the Designated Natural Forested Community area.  
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- 44          11.       The applicant shall remove the existing pole sign prior to installing the monument  
45          sign.

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12. The development authorized under this approval shall be valid for 24 months from the date of approval. If not constructed within the 24-month period the variance approval will automatically expire.

13. The applicant will attempt to light the sign with LED lighting.

14. The height of the monument sign will not exceed 10 feet.

15. This is a final order.

Section 6. Record.

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

Section 7. This resolution shall take effect immediately upon approval.

PASSED and ADOPTED this [20] day of September, 2010.

Attest: Meighan Alexander  
Meighan Alexander  
Village Clerk

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

APPROVED AS TO FORM:

Eve A. Boutsis  
Eve A. Boutsis,  
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Ed Feller	<u>YES</u>
Council Member Howard Tendrich	<u>YES</u>
Council Member Shelley Stanczyk	<u>YES</u>
Vice-Mayor Brian Pariser	<u>YES</u>
Mayor Eugene P. Flinn, Jr.	<u>YES</u>