

RESOLUTION NO. 2011-35

ZONING APPLICATION VPB-11-003

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; GRANTING THE VARIANCE REQUEST OF APPLICANTS HECTOR & ADRIANA HERNANDEZ, PROPERTY LOCATED AT 8280 SW 144 STREET, PALMETTO BAY, FLORIDA, FOR A VARIANCE OF SETBACK REQUIREMENTS FOR CONSTRUCTION OF AN ADDITION TO AN EXISTING SINGLE FAMILY HOMES ON A PARCEL ZONED E-M, AS PROVIDED FOR UNDER SECTION 30-30.6, OF THE VILLAGE'S CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, applicants, Hector and Adriana Hernandez, pursuant to Section 30-30.6 of the Village of Palmetto Bay's Land Development Code (LDC) filed an application requesting a variance of setback requirements to allow construction of a master bedroom and den addition to setback 16.74' where 25' is required from the west side interior property line and 16.35' where 25' is required from the south rear property line on a parcel zoned E-M, Estate Modified Single-Family Residential District; and,

WHEREAS, Planning and Zoning Department issued a recommendation of approval of the setback variance for the proposed addition; and,

WHEREAS, the Village Council of the Village of Palmetto Bay conducted a quasi-judicial hearing on the application at the Deering Estate on May 9, 2011; 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 LDC 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:

Section 1. A hearing on the present application was held on May 9, 2011 in accordance with the Village's "Quasi-judicial hearing procedures" Ordinance, found at Section 2-107, of the Village's Code of Ordinances. Pursuant to the hearing, the Mayor and Village Council make the following findings of fact, and conclusions of law.

Section 2. Findings of fact.

The applicants' property is located at 8280 SW 144 Street, Palmetto Bay, Florida. Pursuant to Section 30-30.6, of the Code, the applicants are requesting a variance of setback requirements to permit construction of a master bedroom and den addition (869 sq. ft.) to setback 16.74' where 25' is required from the west side interior property line and 16.35' where 25' is required from the south rear property line. The physical limitations due to the irregular placement and configuration of the existing home have created a special condition upon this property, which is not applicable to other structures within the general area.

The Council held a public hearing and the property and the applicant, Hector Hernandez, and neighbor (abutting the south side of the property) Alan Schwartz, 14441 SW 83 Avenue, spoke in favor of the project. The Council incorporates by reference the minutes, audio tape, and transcript (if transcribed) into its findings of fact.

The adopted 2009 Amended Village of Palmetto Bay Comprehensive Plan, Future Land Use Map designates the site as Estate Density Residential. The residential density allowed in this category is less than 2.5 dwelling units per gross acre.

ZONING

FUTURE LAND USE DESIGNATION

Subject Property:

E-M; Estate Modified
Single-Family District

Estate Density Residential (EDR)
Less than 2.5 D.U. per gross acre

Surrounding Properties

NORTH: E-M; Estate Modified
Single-Family District

Estate Density Residential (EDR)
Less than 2.5 D.U. per gross acre

SOUTH: E-M; Estate Modified
Single-Family District

Estate Density Residential (EDR)
Less than 2.5 D.U. per gross acre

EAST: E-M; Estate Modified
Single-Family District

Estate Density Residential (EDR)
Less than 2.5 D.U. per gross acre

WEST: E-M; Estate Modified
Single-Family District

Estate Density Residential (EDR)
Less than 2.5 D.U. per gross acre

Section 3. Standard of Review.

On December 2009, the Village Council adopted Division 30-30 of the Code, relating to "Development Approval Procedures." Section 30-30.6 of the Code, entitled "Variances" governs the process for addressing a variance request. The Village defined a variance as "a relation of the terms of Chapter 30 of the Code, due to an unnecessary and undue hardship when

relation of terms is not contrary to the public interest and results from conditions peculiar to the property and not the result of the actions of the applicant that may result from a literal enforcement of Chapter 30 of the Code.” In short, the Village has adopted a strict hardship standard for reviewing a variance request. The Village Council specifically identified permitted variances at subsection (b), and prohibited variances at subsection (c).

In Section 30-30.6(b) of the Code, a variance is authorized to be granted by the Village Council, after quasi-judicial public hearing, only for setback lines; lot width; street frontage; lot depth; lot coverage; landscape or open space requirements; height limitations; yard regulations; fence and wall regulations; signs; parking; and flood regulations approved under Section 30-100.6, of the Code of Ordinances, and other matters specifically permitted as variances pursuant to this Division.

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

Pursuant to Section 30-30.6(e) of the Code, the Village Council may after public hearing, adopt a written resolution granting, granting with conditions or denying the variance request. The criteria for reviewing and approving the variance are as follows:

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

The Village Council found that the variance requested is allowed and within the province of the Village Council as this is an unnecessary and undue hardship to the property owner. The request is not contrary to the public interest and results from conditions peculiar to the property and not the result of the actions of the applicants. Financial considerations are not taken into consideration while reviewing this request.

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

The home was constructed in 1967, during an era where homes were typically placed on an angle. The Village Council determined that the home was irregularly placed on an angle; therefore, the existing layout of the home creates the hardship due to the design and placement of the structure on site.

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

The Council determined that there exists a special condition on site due to the existing layout of the home.

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

The Council determined that the request, if approved, will allow the applicants to construct a master bedroom and den addition. The addition will be constructed as indicated in the proposed plan and would utilize the minimum variance requested without creating a potential life and safety issue.

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

The Council determined that there are no financial or economic hardships related to this application.

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

The Council determined that the physical limitations due to the irregular placement of the home limit the property owners' options with regard to a master bedroom and den addition. Further, an option of constructing a second story on the existing home was determined to be unacceptable, as said construction would negatively impact the surrounding neighborhood.

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

The Council determined that the requested variance will have a minimum adverse impact to the adjacent properties in the immediate area. The condition to include landscaping and a fence to surround the addition will provide an acceptable buffer to minimize potential noise impacts.

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

The Council found that this variance will be in harmony with the general intent and purpose of the Comprehensive Plan and Chapter 30 of the Code. The scale, height, and size are appropriate and compatible with the character of the surrounding neighborhood.

(9) In granting any variance, Village Council may prescribe appropriate conditions to mitigate the proposed variance and to ensure safeguards in conformity with the comprehensive plan and

Chapter 30 or any other duly enacted ordinance. Violation of conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter and shall nullify the variance development approval.

Approval of the variance requests will be consistent with the densities of the 2009 Future Land Use Map. The Council included additional conditions based upon their evaluation and understating of the technical and non-technical aspects of the application. The Applicants have agreed to the Conditions imposed by Council. The conditions shall provide clear guidance to mitigate the potential impacts created by the proposed variances.

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

Section 4. Conclusions of law.

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

2. The standard of review for a variance is found at Section 30-30.6 of the Village's Land Development Code. That the Applicant's request for a setback variance is in compliance with the applicable hardship standards as to the location of the existing structure as related to the parcel of land.

Section 5. Order.

The Village Council approves the request for a variance of setback requirements to permit construction of a master bedroom and den addition (869 sq. ft.) to setback 16.74' where 25' is required from the west side interior property line and 16.35' where 25' is required from the south rear property line. The variance is in keeping with the basic intent and purpose of the zoning and land use regulations. In addition, the requested variance will not have a negative impact on the surrounding area, as compliance with the condition to install landscaping and a fence that will significantly minimize noise and aesthetic impacts. As such, approval of this application is in character with the surrounding uses, and would be consistent with the Village's Comprehensive Plan.

Therefore, the Council approves the variance request pursuant to Section 30-30.6 of the Code to allow plans entitled "Addition and Remodeling Hernandez Residence, 8280 SW 144 Street,

Miami, FL”, consisting of six (6) sheets date-stamp received February 4, 2011, as prepared by Cesar M. Cano, A.I.A., with the following conditions:

1. The applicants are to comply with the requirements of all other applicable departments and agencies as part of the Village of Palmetto Bay’s building permit submittal process.
2. The application must meet the minimum requirements of Chapter 24 of the Code of Miami-Dade County.
3. The applicants shall maintain at all times a six (6) foot fence/wall along the west and south property line as buffer to the adjacent property.
4. The applicants are to comply with the landscaping requirements imposed by the Village of Palmetto Bay to assist with screening/buffering of the proposed addition.
5. 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 with automatically expire.
6. This is a final order.

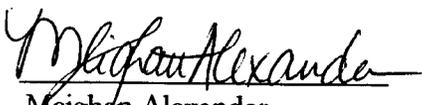
Applicants have stipulated their agreement to all conditions. Use of the property must the requirements and policies of all other applicable departments/agencies as part of the building permit submittal process.

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 9th day of May, 2011.

Attest: 
Meighan Alexander
Village Clerk


Shelley Stanczyk
Mayor

APPROVED AS TO FORM:



Eve A. Boutsis,
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore	<u>YES</u>
Council Member Howard J. Tendrich	<u>YES</u>
Council Member Joan S. Lindsay	<u>NO</u>
Vice-Mayor Brian W. Pariser	<u>YES</u>
Mayor Shelley Stanczyk	<u>YES</u>