

**RESOLUTION NO. 2011-36**

**ZONING APPLICATION VPB-11-002**

**A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; APPROVING THE APPLICATION OF DIANE B. & JEFFREY TANNER PURSUANT TO SECTION 30 OF THE VILLAGE OF PALMETTO BAY CODE OF ORDINANCES FOR A LOT SIZE REQUIREMENTS ON A PROPERTY ZONED R-1, SINGLE FAMILY RESIDENTIAL, LOCATED AT THE THIRD PARCEL FROM THE SOUTHEAST CORNER OF SW 157 STREET AND SW 92 AVENUE, PALMETTO BAY, FLORIDA; PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the applicant made an application for a variance of lot size requirements to allow for the construction of a two-story new single-family home (4,000 sq. ft.) on a legally non-conforming plated parcel with a lot frontage of 65' where 75' is required, and a net lot area of 7,150 sq. ft. where 7,500 sq. ft. is required on a property zoned R-1, Single-Family Residential District. This property is a legally, non-conforming parcel, location: the third parcel from the southeast corner of SW 157 Street and SW 92 Avenue, as described in the Village's Department of Planning and Zoning's Analysis, which is part of this record; and,

WHEREAS, the Village Council of the Village of Palmetto Bay conducted a quasi-judicial hearing on the application at the Village Hall Council Chambers, 9705 E. Hibiscus Street, 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 33-311, of the Miami-Dade County Code, as adopted by the Village relating to the 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 May 9, 2011, 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 the third parcel from the southeast corner of SW 157 Street and SW 92 Avenue, Palmetto Bay, Florida. The applicants, Diane B. and Jeffrey Tanner, have submitted an application requesting a variance of lot size requirements to allow for the construction of a new

two-story, single-family home (4,000 sq. ft.) on a legally non-conforming platted parcel with a lot front of 65' where 75' is required; and, a net lot area of 7,150 sq. ft. where 7,500 is required on a property zoned R-1, Single-Family Residential District.

The surrounding area is characterized by R-1 Residentially zoned properties and neighborhood services would not be impacted by this application.

In January, 2011, the applicants obtained a demolition permit to demolish the home on lot 6. The applicant then submitted a building permit to construct a single family home on lot 6 to the Building Department and was informed by staff that variance would be required to build on a legally non-conforming parcel. Under the current zoning regulations, the applicants are unable to meet minimum lot size requirements; therefore, the applicants were required to request a variance.

The public hearing was conducted on May 9, 2011, and the following persons testified:

Jeffrey Tanner, applicant, and the following neighbors who spoke in support of the request: Marvin Jerome Johnson, 8950 SW 159 Terrace; Don Taylor, 9085 SW 157 Street; and Greg Alexander, 9058 SW 157 Street.

The public hearing was closed.

The adopted 2009 Village of Palmetto Bay Amended Comprehensive Plan, Future Land Use Map, adopted under Ordinance 09-30, designates the site as Medium Density Residential. The residential density allowed in this category is less than 5-13 dwelling units per gross acre.

**ZONING**

**FUTURE LAND USE DESIGNATION**

**Subject Property:**

R-1, Single-Family Residential District

Low Medium Density Residential;  
5 to 13 D.U. per gross acre

**Surrounding Properties**

**NORTH:** R-1; Single-Family Residential District

Low Medium Density Residential;  
5 to 13 D.U. per gross acre

**SOUTH:** R-1; Single-Family Residential District

Low Medium Density Residential;  
5 to 13 D.U. per gross acre

**EAST:** R-1; Single-Family Residential District

Low Medium Density Residential;  
5 to 13 D.U. per gross acre

**WEST:** R-1; Single-Family Residential District

Low Medium Density Residential;  
5 to 13 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 Council found that the variances requested are allowed and within the province of the Village Council as the property is subject to an unnecessary and undue hardship. The Comprehensive Plan allows for 5 to 13 dwelling units per gross acre. The parcel cannot meet the minimum requirements of the zoning district, R-1, as the parcel is platted at 7,150 square feet. Due to property rights considerations, and the requirement, that every property have a viable use, the development of the vacant parcel as a single-family home, is not contrary to the public interest and results from conditions peculiar to the property. The zoning of the parcel is not the result of actions of the applicant and the variances would be the minimum variances needed to make use of the parcel. Financial considerations are not a consideration in this analysis.

- (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.

Under the current zoning designation, the subject property does not meet minimum lot size requirements. The existing legally non-conforming lot size creates the hardship. Several other parcels in the "Town of Rockdale" also fail to meet the minimum requirements of the R-1 district.

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

The special condition on site is due to the irregular lot size of the parcel. In addition, the Village rezoned the parcel in 2009 from RU-1 to R-1, which negated the previous approval from Miami-Dade County via Resolution No. 4-ZAB-456-86.

- (4) That granting of 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.

Approval allows the applicant to construct a single-family home in its proposed location would be the minimum variance requested without creating a potential life and safety issue to adjacent neighbors.

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

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 physical limitations of the lot size and the recent rezoning by the Village limit the applicants' ability to construct a single-family home on his property.

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

The requested non-use variance will have a minimum adverse impact to the adjacent properties in the immediate area. In the past, other homes in the immediate area have been constructed on similar lots.

- (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.

Staff finds that if approved the request will be in harmony with the general intent and purpose of the Comprehensive Plan and Chapter 30 of the Code. In fact, the Village Council modified the Comprehensive Plan in 2009, in an attempt to bring the nonconforming lots into conformity. The scale, height, and size will be compatible with the character of surrounding neighbors.

- (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 remains consistent with the densities of the 2009 Future Land Use Map.

According to Section 30-30.6(f) of the LDC, 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 3. 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.

### Section 4. Order.

The applicants' request for a variance of lot size requirements is approved under Section 30-30.6, with conditions. The conditions attached to the approval are based on the applicants' intention to construct a two-story new single-family home, as shown on the plans entitled "A new residence for Jeffrey Tanner 9078 SW 157<sup>th</sup> Street, Palmetto Bay, FL 33157", consisting of 13 sheets dated stamped received February 8, 2011, as prepared by William B. Hall, Architects, as follows:

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 relocate all existing trees affected by the proposed development to another location within the property and shall be noted on the plans submitted to the Building Department. Compliance with this requirement shall be noted on the plans.
4. 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.
5. Applicant shall immediately request from the Miami-Dade County Property Appraiser to issue a separate folio number for each home for ease in ad valorem taxation by the Taxing Authority.

Applicant has 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.

This is a final order.

Section 5.      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 6.      This resolution shall take effect immediately upon approval.

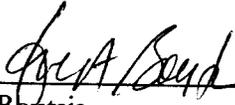
PASSED and ADOPTED this 9<sup>th</sup> day of May, 2011.

Attest:

  
Meighan Alexander  
Village Clerk

  
Shelley Stanczyk  
Mayor

APPROVED AS TO FORM:

  
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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>YES</u>
Vice-Mayor Brian W. Pariser	<u>YES</u>
Mayor Shelley Stanczyk	<u>YES</u>