

RESOLUTION NO. 2011-38

ZONING APPLICATION VPB-11-005

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; APPROVING, WITH CONDITIONS, THE APPLICATION OF CECIL AND NANCY WETHY, PROPERTY LOCATED AT 6843 SW 145 TERRACE, PALMETTO BAY, FLORIDA; APPROVING SHED AMNESTY VARIANCE REQUEST FOR SHED SETBACK REQUIREMENTS TO SETBACK ZERO (0) FEET FROM THE NORTH (REAR) FAÇADE WHERE TEN (10') FEET IS REQUIRED BETWEEN STRUCTURES ON A PARCEL ZONED E-S, AS PROVIDED FOR UNDER SECTION 33-311, OF THE COUNTY CODE, AND ORDINANCE 09-03; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on February 2, 2009, the Village Council, pursuant to Ordinance Number 09-03 ("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; and

WHEREAS, the Village created a Shed Administrative Variance process for sheds located more than 3 feet from the property line and under 150 square feet, all other sheds would have to adhere to the provisions of Section 33-311(4)(b) or (c) of the Miami-Dade County Code, and apply for a quasi-judicial hearing for a setback variance; and,

WHEREAS, Planning and Zoning Department issued a recommendation of approval of the shed; and,

WHEREAS, the Village Council of the Village of Palmetto Bay conducted a quasi-judicial hearing on the application at the Village Hall, 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 above request, find that the application, with conditions, is consistent with the Village's Comprehensive Plan and the applicable land development regulations; and,

WHEREAS, based on the foregoing, the Mayor and Village Council determined to grant the application, as amended (modified/conditioned) by Council Action 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. As a result of the hearing, the Mayor and Village Council make the following findings of fact, and conclusions of law.

Section 2. Findings of fact. The subject property is located at 6843 SW 145 Terrace, Palmetto Bay, Florida.

The Council held a public hearing. No member of the public wished to be heard on the application. The Council incorporates by reference the minutes, audio tape, and transcript (if transcribed) into its findings of fact.

The applicants submitted a non-use variance application requesting relief from setback requirements in order to allow an existing shed (10' x 13' = 130 sq. ft.) to have a setback of zero (0) feet from the north (rear) façade where ten (10') feet is required between structures on a parcel zoned E-S.

The Mayor and Village Council of the Village of Palmetto Bay recognized that many sheds have been built on residential properties without a building permit, particularly after Hurricane Andrew or other hurricane events. Due to the emergency and security risk situation after hurricanes, permits were often not sought by the homeowners. The Village cannot determine whether these sheds were built due to the aftermath of Hurricane Andrew or more recently. In an effort to facilitate legalization and permitting of these structures to ensure compliance with the Florida Building Code, and to obtain compliance within the community, the Village Council created an 18 month amnesty program to legalize shed structures that meet certain requirements of an administrative zoning review and approval process. As such, the Mayor and Village Council adopted an amendment to Chapter 30 of the Village's Code of Ordinances entitled "Shed Amnesty Program" under Ordinance 09-03.

The amnesty period was for an 18-month period starting in February, 2009. Failure to apply for amnesty within the 18-month period shall not cure the violation and each property owner may be liable for civil citations for violation of this Code. This amnesty for certain sheds shall only apply to residential properties within the Village of Palmetto Bay. It shall not apply to commercial properties.

In order to issue a permit so that the property owner or representative can call for required inspections, the applicant shall be required to apply for a building permit with the Building Department and provide the Department a detailed set of plans. The application and plans will be processed as per the applicable building code requirements at the time of the shed's construction, provided, there is clearly established evidence of when the shed was constructed. If there is no evidence of when the shed was constructed, the shed shall comply with the current version of the Florida Building Code. Double permit fees shall be waived; only the "original" amnesty permit fee to obtain a building permit shall apply.

If the ancillary shed is within the side or rear setbacks, is less than 150 square feet; and provided that the location of the shed is more than 3 feet from any point on the structure to the existing

side and rear property lines, or a distance required by the Florida Building Code, then the ancillary shed may remain in its current location, upon administrative zoning review and building permit approval as provided above. Any shed of greater size than 150 square feet and/or located within 3 feet of an adjacent property line, then, that shed must either apply for a zoning non-use non-administrative variance hearing, which would need to be granted by the Village Council pursuant to the criteria of Section 33-311(4)(b) or (c) of the Code; or have the shed removed.

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 33-311(4)(b) and (c), of the Miami-Dade County Code. That the Applicant's request for a setback variance is in compliance with the applicable standards, as conditioned below.

Section 4. Order.

A. The Council, pursuant to Section 33-311(4)(b), of the Miami-Dade County Code as applied by the Village, approves with conditions the Applicants' request for a setback variance to keep a shed located zero (0) feet from the north (rear) façade where ten (10) feet is required between structures on a parcel zoned E-S. As the shed setback is reduced more than three (3) feet, the applicants were required to adhere to the Village's Shed Amnesty Variance process. The existing shed is in keeping with the basic intent and purpose of the zoning and land use regulations. Approval of this application is in character with the existing use of the property and is consistent with the Village's Comprehensive Plan. The Village Council accepts the plans entitled "6843 SW 145 Terrace, Palmetto Bay, FL 33158", as prepared by Cecil M. Wethy, consisting of two (2) sheets, date-stamp received August 18, 2010.. The Applicants were not present. The Village approved the application, subject to the following conditions:

1. The applicants are to comply with the requirements of all other applicable departments/agencies as part of the Village of Palmetto Bay building permit submittal process.
2. The applicants are to comply with the landscaping and screening requirements and all other requirements imposed by the Village of Palmetto Bay.
3. The applicants are to comply with all the requirements of Ordinance Number 09-03 (Shed Amnesty Ordinance).
4. Applicants must complete permitting within sixty (60) days of this Zoning approval or the approval obtained is null and void.

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

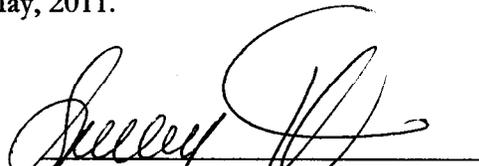
Zoning Department in connection with the applications, the Village's recommendation and attached cover sheet and documents, the testimony of sworn witnesses and documents presented at the quasi-judicial hearing, and the tape and minutes of the hearing. The record shall be maintained by the Village Clerk.

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

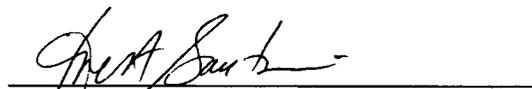
PASSED and ADOPTED this 9th day of May, 2011.

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