

1 RESOLUTION NO. 2012-26

2
3 ZONING APPLICATION VPB 11-007

4
5 A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE
6 VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING;
7 APPROVING WITH CONDITIONS THE APPLICATION OF ANA
8 DELIA BELLO, LOCATED AT 9601 SW 183RD STREET, PALMETTO
9 BAY, FLORIDA APPROVING WITH CONDITIONS THE VARIANCE
10 REQUEST FROM SHED SETBACK REQUIREMENTS, TO SET BACK A
11 SHED 0.75 FEET FROM THE WEST INTERIOR PROPERTY LINE
12 WHERE 7.5 FEET IS REQUIRED FOR A 191.18 SQUARE FOOT SHED,
13 ON AN PARCEL ZONED R-1, AS PROVIDED FOR UNDER 30-30.6, OF
14 THE VILLAGE CODE; PROVIDING AN EFFECTIVE DATE.
15

16
17 WHEREAS, pursuant to section 30-30.6 of the Village's Land Development Code, the
18 applicant is requesting a variance of setback requirements to allow an existing shed/accessory
19 structure to have a setback of 0.75 feet from the interior side (west) property line where 7.5 feet is
20 required in the R-1 zoning district; and,
21

22 WHEREAS, Planning and Zoning Department issued a recommendation of approval of the
23 variance; and,
24

25 WHEREAS, the Village Council of the Village of Palmetto Bay conducted a quasi-judicial
26 hearing on the application at Village Hall on March 19, 2012; and,
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28 WHEREAS, the applicant was present, was represented by her son, who received Spanish
29 translation of the hearing by Mr. Efren Nunez, Zoning Administrator of Palmetto Bay. The
30 applicant acknowledged that Mr. Nunez is not a certified Spanish Translator and indicated that she
31 understood what was explained to her; and,
32

33 WHEREAS, the Mayor and Village Council find, based on substantial competent evidence
34 in the record and pursuant to Section 30-30.6 of the Village Land Development Code, that the
35 application as amended by Council Action is consistent with the Village's Comprehensive Plan and
36 the applicable land development regulations; and,
37

38 WHEREAS, based on the foregoing finding, the Mayor and Village Council determined to
39 grant the application, as amended (modified/conditioned) by the Village Council.
40

41 NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE
42 COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:
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44 Section 1. A hearing on the present application was held on March 19, 2012, in
45 accordance with the Village's "Quasi-judicial hearing procedures" Ordinance, found at 2-105, of the
46 Village's Code of Ordinances. Pursuant to the hearing, the Mayor and Village Council make the
47 following findings of fact, and conclusions of law.

1
2 Section 2. Findings of fact.

3 The subject property is located at 9601 SW 183 Street, Palmetto Bay, Florida.

4
5 The Council held a public hearing and no one spoke on the application. The Council incorporates
6 by reference the minutes, audio tape, and transcript (if transcribed) into its findings of fact.

7
8 The applicants submitted an application requesting a setback variance to allow an existing shed
9 (15.80' x 21.10' = 191.18 square feet) to have a setback of 0.75 feet from the west interior property
10 line where 7.5 feet is required on a parcel zoned R-1.

11
12 The Mayor and Village Council recognized that many sheds have been built on residential properties
13 without a building permit, particularly after Hurricane Andrew or other hurricane events. Due to the
14 emergency and security risk situation after hurricanes, often permits were not sought by the
15 homeowners. Often, the Village cannot determine whether the sheds were built due to the
16 aftermath of Hurricane Andrew or more recently.

17
18 Previously, in an effort to facilitate legalization and permitting of these structures to ensure that
19 these structures comply with the Florida Building Code, and to obtain compliance within the
20 community, the Village Council created an 18 month amnesty program to legalize shed structures
21 that meet certain requirements of an administrative zoning review and approval process. As such,
22 the Mayor and Village Council adopted an amendment to Chapter 30 of the Village's Code of
23 Ordinances entitled "Shed Amnesty Program" under Ordinance 09-03. The Shed Amnesty Period
24 has expired. The Applicant is no longer eligible for the Amnesty Program.

25
26 The Department found that the Applicant may request a variance of setback requirements as a
27 variance allowed under the Code. In making the request, the Applicant must demonstrate an undue
28 hardship. The Department determined that the Applicant is unable to neither modify nor move the
29 existing shed as it is CBS construction. The Village Council in enacting the shed amnesty ordinance
30 sought to allow homeowners the right to legalize all nonconforming sheds; however, the Applicant
31 was not aware that the shed was in the setback until after the Applicant took possession of the
32 property from the bank in August, 2011, and after the shed amnesty ordinance had expired. The
33 property is located in an interior lot, located within the Franjo Park Subdivision. The existing
34 shed/accessory structure is located in the northwest corner of the lot and is setback .75 feet west of
35 the interior property line. The existing CBS structure is bounded by the swimming pool to the east
36 and thus, cannot be moved without causing extensive damage to the existing rear of the home and
37 the existing shed. The applicant acquired the home with no prior knowledge that the shed was
38 within the setback. Upon requesting an inspection for interior work, the Applicant received a
39 warning from Code Compliance that the shed was within the setback. Following the advice of a
40 neighbor that previously took part in the shed amnesty program, the applicant applied for a variance,
41 as the Shed Amnesty Program had expired. Granting of the request will allow the Applicant to
42 enjoy the same development standards as others within the neighborhood who previously utilized
43 the Shed Amnesty Process.

44
45 The property meets all zoning requirements as to lot size, depth, frontage, etc. There is no evidence
46 that the current use would result in an unnecessary hardship to the surrounding neighbors, as there

1 is no illegal nonconformity, nor any physical limitations to the land. However, the Village Council
2 enacted the shed amnesty program that sought to legalize the nonconforming sheds. The applicant
3 merely sought the same development standards enjoyed by their neighbors. The request may be
4 considered in harmony with the general intent and purpose of the Comprehensive Plan because the
5 scale and size of the existing shed is compatible with the character and size of other sheds/accessory
6 structures in the immediate and surrounding neighborhood.
7

8 Section 3. Conclusions of law.

9 1. The Application is in compliance with the adopted 2005 Village of Palmetto Bay
10 Comprehensive Plan, and Future Land Use Map.
11

12 2. The standard of review for a variance is found at 30-30.6, of the Village's Land
13 Development Code. The Applicant's request for a setback variance is in compliance with the
14 applicable standards, subject to the below conditions.
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16 Section 4. Order.
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18 A. The Council, pursuant to Section 30-30.6, of the Village's Land Development Code
19 approves, with conditions, the Applicant's requests for a setback variance to allow an existing shed
20 (15.80' x 21.10' = 191.18 square feet) to have a setback of 0.75 feet from the west interior property
21 line where 7.5 feet is required on a parcel zoned R-1. The existing shed is in keeping with the basic
22 intent and purpose of the zoning and land use regulations. Approval of this application is in
23 character with the existing use of the property and is consistent with the Village's Comprehensive
24 Plan. The Village Council approves the survey prepared for Ana Delia Bello, consisting of one
25 sheet, survey date stamped received November 21, 2011, as prepared by Freedom of Land Corp.,
26 Surveying Services.
27

28 B. The Village Council conditions/modifies the approval as follows:
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- 30 1. The applicant is to comply with the requirements of all other applicable
31 departments/agencies as part of the Village of Palmetto Bay building permit
32 submittal process.
- 33 2. The applicant is to comply with the landscaping and screening requirements and all
34 the requirements imposed by the Village of Palmetto Bay under Ordinance Number
35 09-03 (Shed Amnesty Ordinance).
- 36 3. Compliance with this Variance approval shall be completed with 24 months from the
37 date of approval or the approval shall automatically rescind.
38

39 This is a final order.

40 Section 5. Record.

41 The record shall consist of the notice of hearing, the application, documents submitted by
42 the applicant and the applicant's representatives to the Village of Palmetto Bay Planning and Zoning
43 Department in connection with the applications, the Village's recommendation and attached cover
44 sheet and documents, the testimony of sworn witnesses and documents presented at the quasi-

1 judicial hearing, and the tape and minutes of the hearing. The record shall be maintained by the
2 Village Clerk.

3
4 Section 6. This resolution shall take effect immediately upon approval.

5 PASSED and ADOPTED this 19th day of March, 2012. (Executed March 23, 2012)

6
7 Attest: Meighan Alexander
8 Meighan Alexander
9 Village Clerk

Shelley Stanczyk
Shelley Stanczyk
Mayor

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11
12 APPROVED AS TO FORM:

13
14 Eric A. Boutsis
15 Eric A. Boutsis,
16 Village Attorney

17
18
19 FINAL VOTE AT ADOPTION:

20
21 Council Member Patrick Fiore YES
22
23 Council Member Howard Tendrich YES
24
25 Council Member Joan Lindsay YES
26
27 Vice-Mayor Brian Pariser YES
28
29 Mayor Shelley Stanczyk. YES
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