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**RESOLUTION NO. 2012-95**

**ZONING APPLICATION VPB-12-004**

**A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; GRANTING THE APPLICATION OF THOMAS AND VANESSA CETTA LOCATED AT 17222 SW 88TH AVENUE, APPROVING VARIANCE OF SETBACK REQUIREMENTS TO PERMIT A SERIES OF STRUCTURES WITHIN THE SETBACKS OF A PARCEL ZONED E-M; PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the applicants made applications for a setback variances for the property located at 17222 SW 88th Avenue, as described in the Village of Palmetto Bay Department of Planning and Zoning Recommendation, which is attached to this resolution; and,

WHEREAS, the Village Council of the Village of Palmetto Bay conducted a quasi-judicial hearing on the application at Village Hall, 9705 East Hibiscus Street on December 17, 2012; and,

WHEREAS, the Mayor and Village Council finds, based on substantial competent evidence in the record, that the applications for the setback variances are consistent with the Village of Palmetto Bay Comprehensive Plan and the applicable land development regulations; and,

WHEREAS, based on the foregoing finding, the Mayor and Village Council determined to grant the applications, 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 public hearing on the present applications was held on December 17, 2012 in accordance with the Village's "Quasi-judicial hearing procedures." Pursuant to the testimony and evidence presented during the hearing, the Village Council makes the following findings of fact, conclusions of law and final order.

Section 2. Findings of fact.

1. The applicants are requesting: 1.) a variance of setback requirements to permit an existing shed/accessory structure (12.10' x 10.05' = 121.60 sq. ft.) to be setback 5.70' from the rear (west) property line where 7.5' is required and 0.75' from the interior side (south) property line where 20' is required for sheds greater than 100 sq. ft.; 2.) to permit an existing shade structure (boat port) (11.10' x 21.15' = 234 sq. ft.) and existing concrete slab to be setback 0.65' where 20' is required from the interior (south) property line; and 3.), and to permit a (16' x 16' = 256 sq. ft.) Tiki Hut to be setback 6.70' between the rear (west) façade of the principle structure where 10' is required between buildings. The subject property is an interior lot, consisting of a single-family home located within the Glenwood Estates Subdivision and is of typical size. The property is located within the Estate Modified Single-Family Residential District (E-M).

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2           2.       On September 12, 1957, the Board of Dade County Commissioners via resolution  
3 231 approved the applicants' request for a district boundary change from Agriculture (AU) to Estate  
4 Modify (EU-M).

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6           3.       In 2009, the Village enacted its Land Development Code (LDC) and in so doing,  
7 rezoned the subject property as E-M, Estate Modified.

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9           4.       No testimony or evidence was presented during the public hearing to dispute  
10 consistency with the Village's Comprehensive Plan.

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12           5.       The Council found that based upon the testimony of the applicants and their  
13 counsel, Tom David, that the home itself is irregularly shaped, thus creating a situation not of the  
14 applicants' causing, that would bring the request into compliance with the Criteria 2 of 30-30.6  
15 (existence of special conditions or circumstances which are peculiar to the land, structure, or  
16 building involved and which are not applicable to other lands, structures or buildings in the same  
17 zoning district). This finding supports granting a variance as to the Tiki Hut and boat storage area.

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19           7.       The Village adopts and incorporates by reference the Planning & Zoning  
20 Department staff report, which expert report is considered competent substantial evidence, as it  
21 relates *solely* to the shed variance application. The remainder of the recommendations of staff are  
22 rejected.

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24           8.       No one spoke in opposition to the applicants' requests.

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26           Section 3.       Conclusions of law.

27 A variance request is reviewed pursuant to Section 30-30.6(e) of the Village of Palmetto Bay's Code  
28 of Ordinances.

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30           1.       The Village Council finds the request consistent with the criteria of subsections one  
31 (1) through eight (8) of Section 30-30.6(e). In accordance with subsection (1), the variance is in fact  
32 a variance allowed pursuant to the Village's Land Development Code and is within the province of  
33 Village Council. There is no discrepancy with the Village's Comprehensive Code and is, thus,  
34 consistent with the Comprehensive Plan. No testimony or evidence was presented during the public  
35 hearing to dispute consistency with the Village's Comprehensive Plan. Under the Village's zoning  
36 code, a variance may be requested for, amongst other things, setback limitations, as provided under  
37 Section 30-100.6, of the Code of Ordinances.

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39           2.       The Village Council finds the requests consistent with the criteria of subsection (2),  
40 in that there exists a special condition(s) or circumstance(s), which is peculiar to the land, structure,  
41 or building involved and which are not applicable to other lands, structures, or buildings in the same  
42 zoning district.

1           3.       The Village Council finds the requests consistent with the criteria of subsection (3),  
2 in that the special conditions and circumstances do not result from the actions of the applicants, and  
3 is due to the irregular shape of the home.  
4

5           4.       The Village Council finds the requests consistent with the criteria of subsection (4),  
6 in that granting of the variances requested would not confer upon the applicants any special  
7 privilege that is denied by Chapter 30 to other lands, buildings, or structures in the same zoning  
8 district.  
9

10          5.       The Village Council finds the requests consistent with the criteria of subsection (5),  
11 in that financial difficulties or economic hardship is not a factor for determining whether these  
12 variances should be granted.  
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14          6.       The Village Council finds the requests consistent with the criteria of subsection (6),  
15 in that a literal interpretation of the provisions of Chapter 30 would deprive the applicants' of rights  
16 commonly enjoyed by other properties in the same zoning district under the terms of Chapter 30  
17 and would create an unnecessary and undue hardship on the applicants. The purchase of property  
18 that has an illegal nonconformity with Chapter 30 shall not be considered a hardship for the granting  
19 of variances, nor shall conditions peculiar to the property owners be considered.  
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21          7.       The Village Council finds the requests consistent with the criteria of subsection (7),  
22 in that the variances granted are the minimum variances that will make possible the reasonable use  
23 of the land, building, or structure.  
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25          8.       The Village Council finds the requests consistent with the criteria of subsection (8),  
26 in that the granting of the variances will be in harmony with the general intent and purpose of the  
27 Comprehensive Plan and Chapter 30, and that the variances will not be injurious to the area  
28 involved or otherwise detrimental to the public welfare. The requests may be considered in  
29 harmony with the general intent and purpose of the Comprehensive Plan because the scale and  
30 height of the home is compatible with the character and height of other homes in the immediate and  
31 surrounding neighborhood.  
32

33          9.       No additional conditions are imposed by the Council.  
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35           Section 4.       Order.

36          1.       The Village Council grants the variance requests under the plans entitled "Thomas  
37 Cetta and Vanessa Cetta, 17222 S.W. 88<sup>th</sup> Avenue, Palmetto Bay, FL 33157" consisting of one sheet  
38 dated stamped received June 26<sup>th</sup>, 2011, as prepared by Alvarez, Aiguesvives and Associates, Inc.,  
39 pursuant to Section 30-30.6 of the Code.  
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41          2.       This is a final order.  
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