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RESOLUTION NO. 2016-133

ZONING APPLICATION VPB-16-010

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; GRANTING THE APPLICATION OF ALEXANDER SCHOOL, INC., LOCATED AT 14850 SW 67 AVENUE; APPROVING A MODIFICATION TO THE EXISTING SITE PLAN, APPROVING THE EXPANSION OF THE SCHOOL'S ENROLLMENT FROM 270 TO 329; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Applicant, Alexander School, Inc., made an application for a site plan modification to expand student enrollment from 270 Students to 329 students; and

WHEREAS, plans were previously approved and subsequently modified pursuant Resolution Nos. 2-ZAB-370-62, 3-ZAB-40-68, 4-ZAB-609-69, CZAB13-8-00, CZAB13-9-01, and Resolution VPB-2013-005 which included a 270 student kindergarten through ninth grade educational facility and an expansion of the current buildings on site by 18,000 square feet; and

WHEREAS, the applicant is not proposing any physical changes to the approved site plan adopted in 2013 (Resolution 2013-85) and the requested increase in enrolment complies with the spacing and operational standards of that plan; and

WHEREAS, the Village Council of the Village of Palmetto Bay conducted a quasi-judicial hearing on the application on September 19, 2016, at Village Hall, 9705 East Hibiscus Street; and

WHEREAS, the Mayor and Village Council finds, based on substantial competent evidence in the record, that the application for the site plan modification to expand the maximum permitted enrollment from 270 to 329 students is conditionally 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 conditionally 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 public hearing on the present applications was held on September 19, 2016, 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 a. On June 16, 1960, the Board of County Commissioners, Dade County, Florida passed
2 and adopted Resolution No. 5322 approving a boundary district change from EU-1
3 (One Acre Estates) to EU-M (Estate Modified) to permit the single-family use on EU-
4 M.
- 5 b. On June 20, 1962, the Metropolitan Dade County Zoning Appeals Board approved, with
6 conditions, Resolution No. 2-ZAB-370-62 for an Unusual Use to permit a Day School
7 and Day Camp, and an Unusual Use to permit an outdoor recreational area.
- 8 c. On January 17, 1968, the Metropolitan Dade County Zoning Appeals Board passed and
9 adopted Resolution No. 3-ZAB-40-68 expanding the existing non-conforming day
10 nursery school and day camp to allow up to 270 children, and a Special Exception as to
11 Conditions No.'s 4, 5, 6, and 7 of Resolution No. 2-ZAB-370-62.
- 12 d. On November 12, 1969, the Metropolitan Dade County Zoning Appeals Board passed
13 and adopted, with conditions, Resolution No. 4-ZAB-609-69, approving a Special
14 Exception to operate a nursery and a grade school (pre-school through the ninth grade)
15 serving 270 children.
- 16 e. On December 13th, 2000, the Miami-Dade County Community Zoning Appeals Board
17 approved and adopted, with conditions, Resolution No. CZAB13-8-00, approving a
18 Non-Use Variance of setback requirements to permit buildings of public assemblage to
19 setback less than the required 75' from the interior side (north and south) property lines.
- 20 f. On June 19, 2001, the Miami-Dade County Community Zoning Appeals Board
21 approved and adopted Resolution No. CZAB13-9-01, correcting an error in the legal
22 description and reformed Resolution No. CZAB-13-8-00.
- 23 g. On November 18, 2013 the Village Council adopted Resolution 2013-85 granting a site
24 plan modification that involved the demolition of certain building and new construction
25 of others resulting in a net building increase of 18,000 square feet. The initial request
26 included a student increase from 270 to 329 but was subsequently removed when the
27 applicant failed to meet the threshold established by Village Charter Section 10.1.
- 28 h. Village Charter Section 10. Requires 75% of registered voters approve a student increase
29 request before the Village Council may consider such approval.
- 30 i. On June 13, 2016, the 11th Judicial Circuit of the Miami-Dade County issued on an order
31 finding Section 10.1 of the Village Charter to be:

32
33 “...unconstitutional because it is arbitrary and unreasonable, and has no relation to
34 public safety, health, morals comfort or general welfare of the surrounding community
35 [and]... because it deprives... [Alexander]... of its constitutional right to be heard.”
36

37 That decision is now under appeal; however there is no stay on the order. As such, the
38 Applicant is now eligible to request the increased student enrolment. Should the Council
39 be inclined to grant such a request and the 11th Judicial Circuit's decision is then

1 subsequently overturned by the 3rd District Court of Appeals, that decision becomes
2 void and the provision of Village Charter Section 10.1 go back into force.
3

- 4 j. Alexander School, Inc. now requests to increase student enrollment from 270 to 329,
5 and that the request does not require, nor are they requesting, any physical changes to
6 the 2013 site plan approval.
- 7 k. The requested site plan modification to increase enrollment is consistent with the
8 Village's Comprehensive Plan, specifically Goal 1, and Policy 1.1.5, of the Future Land
9 Use Element (FLUE); and Policy 2A.1.1 relating to the level of service of Village Roads.
- 10 l. The rules that govern site plan approval are found at Section 30-30.5, Site Plan
11 Approval, which incorporates therein all portions of the Villages Land Development
12 Code applicable to the review of the applicant's request, including but not limited to
13 Division 30-110, Religious Facilities, Private Schools, Child Care Facilities, and Other
14 Non-Governmental Public Assembly Uses of the Land Development Code. A review of
15 the Code, as evidenced in the analysis of staff, which is incorporated by reference into
16 this resolution, and after hearing the applicant and applicant's experts, the Village
17 Council found the site plan modification request consistent with those standards.
- 18 m. The Village adopts and incorporates by reference the Planning & Zoning Department
19 staff report, which expert report is considered competent substantial evidence.
- 20 n. At the public hearing conducted, no one spoke in opposition to the applicant's requests.
- 21 o. The applicant and the Village agreed upon all modifications to the proposed conditions,
22 which modifications are reflected in the below conditions under Section 4, entitled,
23 "Order."
- 24 p. The Village Council had not substantive disclosures regarding ex parte communications
25 and the applicant raised no objections as to the form or content of any disclosures by the
26 Council.

27 **Section 3. Conclusions of law.**

28 The site plan modification request to increase maximum permitted enrollment from 270 to
29 329 is not subject to Village Charter Section 10.1 unless otherwise overturned on appeal by the 3rd
30 District Court of Appeals; is reviewed pursuant to Section 30-30.5(j)(1) and Division 30-110 of the
31 Village's Land Development Code, and the Village's review of the applicant's traffic study, and is
32 found to be conditionally consistent as provided for in the Order below.
33

34 **Section 4. Order.**

35 The Village Council grants the site plan modification request to increase maximum
36 permitted student enrollment from 270 to 329 as it would be in keeping with the applicable Land
37 Development Regulations and with the Village's Comprehensive Plan as so conditioned below:
38

- 1 1. The attached site plan dated time stamped August 24th, as prepared by Jenifer Briley and
2 associates shall now supersede page SP1.00 of the site plan approved pursuant to
3 Resolution No. 2013-85.
4
5 2. All conditions provided by Resolution No. 2013-85 remain in full affect unless
6 specifically state otherwise in this final order.
7
8 3. Should the 11th Judicial Circuit's decision regarding Village Charter Section 10.1 be
9 overturned by the 3rd District Court of Appeals, then this final order shall be become
10 null and void. Any initiatives or costs incurred by the applicant in preparing for their
11 application and/or towards the implementation of this order is so done at their own risk.
12 The Village shall not be responsible for the applicant's actions towards that end.
13
14 4. Should Miami Dade County return a negative recommendation then this final
15 order shall be null and void.
16
17

18 **This is a final order.**

19
20 **Section 5. Record.**

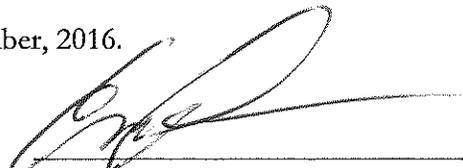
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22 The record shall consist of the notice of hearing, the applications, documents submitted by
23 the applicant and the applicants' representatives to the Village of Palmetto Bay Department of
24 Planning and Zoning in connection with the applications, the county recommendation and attached
25 cover sheet and documents, the testimony of sworn witnesses and documents presented at the
26 quasi-judicial hearing, and the tape and minutes of the hearing. The record shall be maintained by
27 the Village Clerk.
28

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

30 PASSED and ADOPTED this 19th day of December, 2016.

31
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33
34 Attest:


35 Missy Atocha
36 Village Clerk


37 Eugene Flinn
38 Mayor

39 APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE
40 USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY ONLY:

41 
42 Dexter W. Lehtinen
43 Village Attorney
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2 FINAL VOTE AT ADOPTION:
3
4 Council Member Karyn Cunningham YES
5
6 Council Member David Singer YES
7
8 Council Member Larissa Siegel Lara YES
9
10 Vice-Mayor John DuBois YES
11
12 Mayor Eugene Flinn YES