

RESOLUTION NO. 04-24
ZONING APPLICATION 04-1-VPB-1 (02-287)

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; DENYING THE APPLICATION OF GARY & CAROLYN PASTORELLA FOR APPEAL OF ADMINISTRATION DECISION WITH REGARD TO PLAN SUBMITTED FOR HEARING #Z-193-83 (NE CORNER OF SW 144 STREET & OLD CUTLER ROAD, A/K/A: 7055 S.W. 144 STREET); PROVIDING AN EFFECTIVE DATE.

WHEREAS, the applicant is appealing an administrative decision alleging that the Director of the Miami-Dade County Department of Planning and Zoning erred in her May 10, 2002 and January 31, 2003 determinations to approve Substantial Compliance Determination #D2002000008 in which the director found the site plans, as revised, to be basically in accordance with the plans approved pursuant to Resolution #Z-193-83 and the conditions pertaining to the north property contained in the resolution; and,

WHEREAS, the village council of the Village of Palmetto Bay conducted a *de novo* quasi-judicial hearing on the application at Southwood Middle School on February 23, 2004; and,

WHEREAS, the mayor and village council finds, based on substantial competent evidence in the record, that the appellants failed to demonstrate that the director's determination is either not based on the proper criteria, or not supported by competent substantial evidence; and,

WHEREAS, based on the foregoing finding, the mayor and village council determined to deny the appeal.

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 February 23, 2004, in accordance with Ordinance. no. 02-03, entitled "Quasi-judicial hearing procedures." Pursuant to the hearing, the village council makes the following findings of fact, conclusions of law and order.

Section 2. Findings of fact.

1. The appellants are Gary and Carolyn Pastorella.
2. They appeal the May 10, 2002 and January 31, 2003, administrative determinations of the director that certain site plans are "basically in accordance with" the plans approved by the Miami-Dade County Commission in Resolution #Z-193-83.
3. The plans concern the development of property owned by Old Cutler Presbyterian Church. The property is referred to as the "northern property."
4. OCPC also owns and operates church and related facilities on property located immediately south of the northern property, along Old Cutler Road on the other side of S.W. 144 Street
5. In 1983, Dade County Resolution no. Z-193-83 approved a special exception to construct a two-story youth activities building with a floor area of 26,200 sq. ft. The resolution also imposed nine conditions pertaining to the northern property.^{1[1]}
6. Conditions nos. 2 and 4 require that any subsequent detailed plot plan be "basically in accordance with" the plans submitted for public hearing and approved by Resolution no. Z193-83. The plans are identified in the resolution as prepared by Hatcher-Zieglar-Gunn and Assoc., dated 3-29-83, pages 1 & 3, and dated 6-23-83, page 2. The resolution also requires OCPC to provide additional landscaping and driveway modifications as recommended by staff.
7. OCPC submitted plans to the department as part of application #D2002000008.
8. The director initially determined on May 10, 2002, and finally determined on January 31, 2003, that the revised plans are basically in accordance with Resolution no. Z193-83.
9. The applicants appeal the director's decisions to approve the revised site plans for the development of the property upon a finding that said plans were basically in accordance with the plans approved pursuant to Resolution #Z-193-83.
10. At the hearing, counsel for appellants challenged the criteria applied by the director on the basis that the criteria were not adopted or sanctioned by the Miami-Dade county commission.
11. Appellants did not present evidence that the criteria were misapplied by the director.

Section 3. Conclusions of law.

1. As stipulated by counsel for the parties, the appeal of the May 10, 2002 determination is rendered moot by the subsequently submitted plans and the January 31, 2003 determination.

^{1[1]} The northern property also includes an additional lot (Lot 8), which is not the subject of this appeal. Condition #9 pertains only to Lot 8.

2. As further stipulated by counsel, the appellants timely appealed the May 10, 2002 and January 31, 2003 administrative determinations, and the parties received proper notice of the hearing conducted by the village council on February 23, 2004.

3. The proceeding to review a substantial compliance determination of the Director is *de novo*.

4. The standard of review of the director's determination is clearly erroneous.

5. Appellants failed to meet the high burden of proof that the director applied improper criteria to determine that the site development plans are basically in accordance with the of the 1983 Resolution (Z-193-83), or that the criteria were improperly applied.

Section 4. Order.

The application for appeal is denied.

Section 5. Record.

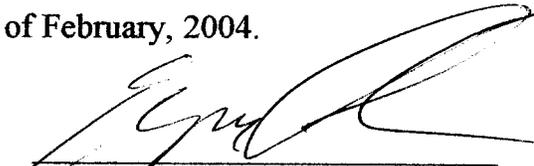
The record shall consist of the notice of hearing, the applications, documents submitted by the applicant and the applicant's representatives to the Miami-Dade County Department of Planning and Zoning in connection with the applications, the county recommendation and attached cover sheet and documents, the testimony of sworn witnesses and documents presented at the quasi-judicial hearing, and the tape and minutes of the hearing. The village clerk shall maintain the record.

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

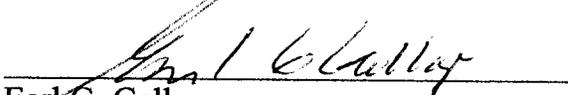
PASSED and ADOPTED this 23rd day of February, 2004.

Attest:


Meighan Pier
Village Clerk


Eugene P. Flinn, Jr.
Mayor

APPROVED AS TO FORM:


Earl G. Gallop,
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Ed Feller	<u>YES</u>
Council Member Paul Neidhart	<u>YES</u>
Council Member John Breder	<u>YES</u>
Vice-Mayor Linda Robinson	<u>NO</u>
Mayor Eugene P. Flinn, Jr.	<u>YES</u>

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