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**RESOLUTION NO. 07-71**

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; APPROVING THE MODIFICATION APPLICATION OF 17777 OLD CUTLER, LLC, ALSO KNOWN AS THE PALMETTO BAY VILLAGE CENTER (PBVC), WHICH IS LOCATED AT 17777-18001 OLD CUTLER ROAD, TO PROVIDE FOR A PARKING GARAGE WITH ROOF-TOP AMENITIES AND TEMPORARY PARKING FACILITIES DURING CONSTRUCTION OF THE PERMANENT PARKING STRUCTURE AND MODIFICATION OF SITE PLAN AND COVENANT RELATING TO THE SITE PLAN; PROVIDING FOR PUBLIC HEARING; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the applicant made applications for a modification of the existing site plan tied to certain covenants in order to construct temporary parking during the construction of a permanent parking structure within the Office Park District (OPD) as described in the staff report of the Community Development Department of the Village of Palmetto Bay, which is attached to this zoning resolution; and,

WHEREAS, the Village Council of the Village of Palmetto Bay conducted a quasi-judicial hearing on the application at Southwood Middle School on June 18, 2007; and,

WHEREAS, the Mayor and Village Council finds, based on substantial competent evidence in the record, that the application for a modification of the site plan and associated covenants tying the OPD to a prior site plan, is consistent with the Village of Palmetto Bay's 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 June 18, 2007 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 applicant, 17777 Old Cutler, LLC, which is also known as Palmetto Bay Village Center ("PBVC") owns and operates the office park at the northeast

1 corner of SW 184<sup>th</sup> Street and Old Cutler Road, which property currently  
2 maintains the address of 17777-18001 Old Cutler Road, Palmetto Bay, Florida.  
3

- 4 2. The property is encumbered by several Declaration of Restrictive Covenants,  
5 which covenants regulate certain uses of the property. These declarations are  
6 attached and incorporated by reference as exhibit B.  
7
- 8 3. The PBVC, specifically requested to modify a set of previously approved plans  
9 under Resolution Z-34-89, in order to construct a 356-space parking structure  
10 (97.5' in height) with roof top recreational amenities use where a surface parking  
11 lot presently exists along with the construction of a temporary parking lot. See  
12 Exhibit A.  
13
- 14 4. On February 23, 1989, pursuant to Resolution Z-34-89, the Board of Miami Dade  
15 County Commissioners approved, with conditions, the applicant's request of an  
16 unusual use to permit a parking lot in a zone more restrictive than the use it  
17 served; to wit parking of cars in a GU district to serve an Office Park District  
18 (OPD) in conjunction with the Modification of Proffered Covenants and  
19 Modification of Declaration of Restrictive Covenants via prior Resolution 4-  
20 ZAB-143-86 as attached hereto.  
21
- 22 5. Under an OPD, the developer is to delineate an open space character for buildings  
23 whose principal uses are administrative, professional or research related. The  
24 major objectives to be achieved by this district are to provide office complexes in  
25 an open space environment, to provide freedom for the designer to take a creative  
26 approach to the development of an office park and thereby to enhance the visual  
27 quality of the Village. Under an OPD, the principal uses permitted are those  
28 associated with office buildings for business, professional and secretarial uses that  
29 cater to the provision of services. Retail and industrial activities are not permitted  
30 as principal uses. Under an OPD, accessory uses are allowed as of right, provided  
31 the accumulated total of all accessory uses does not exceed 15 percent of the total  
32 gross interior square footage of the buildings proposed for the site, excluding  
33 areas devoted to structured parking. Accessory uses may include personal  
34 services, private clubs, print shops, recreational facilities including swimming  
35 pools, and other similar uses.  
36
- 37 6. The adopted 2005 Village of Palmetto Bay Future Land Use Plan designates the  
38 subject property as designated for Village Mixed-Use (VMU), GU and Park Use.  
39 The residential densities allowed in this category range from a minimum of 3.0 to  
40 a maximum of 14 units per gross acre.  
41
- 42 7. VMU also permits non-residential uses such as office and retail with an average  
43 floor area ratio (FAR) of 0.5; subject to the limits adopted as part of an approved

1 "Master Plan" (PBVC Charrette Advisory Committee Report dated September  
2 2004).  
3

4 8. The adopted 2005 Future Land Use Plan designates the easterly portion of the  
5 subject property for environmentally protected parks and the westerly portion of  
6 the property for parks and recreation. The remainder of the property is designated  
7 VMU.  
8

9 9. For a modification of a site plan and/or associated covenant, pursuant to Section  
10 33-311(A)(7), of the Miami-Dade County Code, as adopted by the Village, the applicant  
11 must demonstrate that the modification of the underlying Resolution and covenant would:  
12

- 13 a. not generate excessive noise or traffic;
- 14 b. not tend to create a fire or other equally or greater dangerous hazard;
- 15 c. not provoke excessive overcrowding of people;
- 16 d. not tend to provoke a nuisance; and,
- 17 e. be compatible with the area concerned, when considering the necessity  
18 and reasonableness of the modification, in relation to the present and future  
19 development of the area concerned  
20

21 10. Under the underlying OPD zoning district the maximum height of any structure is  
22 100 feet. As part of the construction of the parking structure with recreational use, the  
23 applicant is seeking to construct a temporary parking lot on that portion of the property  
24 which is also zoned OPD in order to satisfy the existing parking needs being temporarily  
25 displaced during the construction of the parking structure. The construction is contained  
26 within the OPD district and does not affect the GU zoned areas of the PBVC. The  
27 modification, if approved by the Village Council, shall also require a modification of the  
28 associated declaration of restrictions, so that the attached site plans associated with the  
29 declarations correctly reflect the construction, location (site plan) associated with the  
30 parking structure and recreational roof top use.  
31

32 11. The existing covenants for the PBVC, at page four, section 7, indicates that "the  
33 [PBVC] will continue to maintain native vegetation on the portion of their property  
34 located adjacent to Old Cutler Road and the north and south boundaries with the intent to  
35 obscure any visibility of the office building from Old Cutler Road. All landscaping plans  
36 will be submitted to the [Village] for approval prior to implementation." The proposed  
37 97.5 foot high parking structure, according to Dover Kohl, the land planning consulting  
38 firm hired by PBVC, does not impact the native vegetation view of Old Cutler Road, as  
39 the structure is over 500 feet from Old Cutler Road and the property continues to be  
40 buffered by the native vegetation required under the covenant. See attached Exhibit B.  
41 Not only does the structure comply with covenant requirements, but, it is also consistent  
42 with the height limitations as recommended in the Palmetto Bay Village Center Charrette  
43 Advisory Committee Report dated September 2004.  
44

1 12. As the PBVC is an OPD approved via Resolution, staff has confirmed that all  
2 existing and proposed accessory uses for the entire OPD site comply with the provisions  
3 of the Resolution and section 33-284.30, and are within the 15 percent cap on accessory  
4 uses. The 15 percent cap provides the PBVC with 61,771.65 square feet of allowable  
5 accessory uses. Including the modification to include the roof top recreational uses  
6 (includes the entire roof deck), PBVC will have utilized approximately 55 percent of  
7 allowable accessory use space.  
8

9 Section 3. Conclusions of law.

10 1. Pursuant to Section 33-311(A)(7) of the Miami-Dade County Code, as adopted by  
11 the Village, the applicant's request to modify the existing site plans to provide for a  
12 parking structure, temporary parking during construction and roof-top amenities is hereby  
13 granted. The declaration of restrictions which require compliance with prior site plan  
14 shall be modified to include compliance with the attached site plan for a parking garage,  
15 temporary parking and roof-top amenities.  
16

17 2. The applicant has submitted a site plan, floor plans and elevations showing the  
18 development of the proposed parking structure with recreational roof top amenities. The  
19 proposed parking structure with recreational roof top amenities is consistent with the  
20 existing use and is in accordance with the Village's adopted Comprehensive Plan and the  
21 Declaration of Restrictive Covenants associated with the site.  
22

23 3. The zoning code provides a required minimum level of parking. It does not  
24 preclude a development from including additional parking from that beyond required by  
25 zoning. The Village Council accepts the proffered covenant amending the site plan to  
26 include the parking structure would allow the applicant to provide additional parking and  
27 recreational amenities for the existing Office Park Complex.  
28

29 4. The Land Use Map of the Comprehensive Plan designates this site for Village  
30 Mixed-Use which would allow the construction of a parking structure with roof top  
31 recreational amenities. (Remainder of property is designated Park Use and GU). The  
32 parking structure does not add habitable or leaseable space, the Village Council finds that  
33 it will not generate excessive noise or traffic, does not pose any greater fire hazard,  
34 contribute to overcrowding of people, will not provoke a nuisance nor be incompatible  
35 with the area concerned.  
36

37 Section 4. Order.

38 Additional conditions.  
39

40 The Village Council approves the modification request pursuant to 33-311(A)(7),  
41 provided the following conditions are complied with:  
42

- 1 1. The applicant, PBVC, executes and records the proffered covenant to modify the  
2 existing Declaration of Restrictions in order to reflect the modified site plan  
3 approved by the village council. The modified site plan shall be identified as: as  
4 prepared by GAIL BYRON BALDWIN ARCHITECTS Inc., consisting of 16  
5 sheets, dated stamped received 5/25/2007. In no other way shall the existing  
6 covenants be modified or superseded.  
7
- 8 2. The applicant must meet the minimum requirements of Chapter 24 of the Code of  
9 Miami-Dade County and comply with all DERM conditions as set forth in their  
10 memorandum pertaining to this application, once submitted.  
11
- 12 3. The applicant must meet the minimum requirements of all other applicable  
13 departments/agencies as part of the building permit submittal process, including  
14 the Florida Department of Community Affairs.  
15
- 16 4. The applicant shall relocate all existing trees affected by the proposed temporary  
17 parking areas and permanent parking structure to another location within the OPD  
18 site.  
19
- 20 5. The applicant shall provide an additional grouping of native trees and landscaping  
21 at the northern boundary of the site to restore the visual buffer and lost canopy.  
22 The applicant shall submit a landscape plan to be reviewed and approved by the  
23 Village.  
24
- 25 6. The color of the proposed parking structure shall be consistent with existing  
26 buildings on site.  
27
- 28 7. Once the permanent parking structure is constructed the PBVC shall remove all  
29 evidence of the temporary parking area and restore the area to its pre-existing  
30 green condition.  
31
- 32 8. The applicant shall provide improvements to the Old Cutler Bike Path for that  
33 portion of the path adjacent to the subject property, as recommended in the Old  
34 Cutler Bike Path Committee Report, accepted by the Village Council in May  
35 2007. The applicant shall work with the Village as to the timing of construction  
36 of the Bike Path amenities, including lighting of same.  
37

38 This is a final order.

39  
40 Section 5. Record.

41 The record shall consist of the notice of hearing, the applications, documents submitted  
42 by the applicant and the applicant's representatives to the Village's Department of Community  
43 Development in connection with the applications, the county recommendation and attached

1 cover sheet and documents, the testimony of sworn witnesses and documents presented at the  
2 quasi-judicial hearing, and the tape and minutes of the hearing. The record shall be maintained  
3 by the Village Clerk.  
4

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

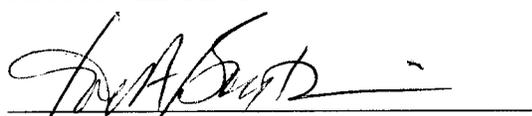
6 PASSED and ADOPTED this 21<sup>st</sup> day of June, 2007.

7  
8 Attest:

  
9 Meighan Rader  
10 Village Clerk

  
Eugene P. Flinn, Jr.  
Mayor

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12  
13 APPROVED AS TO FORM:

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15   
16 Eye A. Boutsis, office of  
17 Village Attorney  
18 Nagin Gallop & Figueredo, P.A.  
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24 FINAL VOTE AT ADOPTION:

25  
26 Council Member Ed Feller YES  
27  
28 Council Member Paul Neidhart YES  
29  
30 Council Member Shelley Stanczyk YES  
31  
32 Vice-Mayor Linda Robinson YES  
33  
34 Mayor Eugene P. Flinn, Jr. YES  
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