

VILLAGE OF PALMETTO BAY, FLORIDA
MINUTES OF THE MONDAY, DECEMBER 17, 2012
MEETING OF THE VILLAGE COUNCIL – ZONING HEARING
Village Hall Chambers
9705 E. Hibiscus Street, Palmetto Bay, FL

- 1. CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE:** Mayor Stanczyk called the meeting to order at 7:10 p.m. The following members of the Village Council were present:

Mayor Shelley Stanczyk
Vice Mayor John DuBois
Councilman Patrick Fiore
Councilman Tim Schaffer
Councilwoman Joan Lindsay

The following staff members were present:
Village Manager Ron E. Williams
Village Attorney Eve Boutsis
Village Clerk Meighan Alexander
Director of Planning and Zoning Darby Delsalle
Zoning Administrator Efren Nunez

Mayor Stanczyk led the pledge of allegiance.

- 2. Approval of Minutes: Zoning Hearing of October 22, 2012**
Councilwoman Lindsay moved to approve. Seconded by Councilman Schaffer. All voted in favor. The Minutes were approved unanimously (5-0.)

READING OF DECORUM STATEMENT/SWEARING IN OF WITNESSES:

Clerk Alexander read the decorum statement: “Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Village of Palmetto Bay Council shall be barred from further audience before the Village of Palmetto Bay Council by the presiding officer, unless permission to continue or again address the council be granted by the majority vote of the council members present.”

Attorney Boutsis provided an explanation of the quasi-judicial process and swore in all individuals who wished to speak.

- 3. The following items are being considered pursuant to Sections 30-30.6 of the Village’s Land Development Code:**

- a. Applicant: THOMAS & VANESSA CETTA (VPB-12-004)
 Location: 17222 SW 88th Avenue, Palmetto Bay Zoned: E-M
 Request: Variance of setback requirements to permit an existing shed / accessory structure (12.10' x 10.05' = 121.60 sq. ft.) to 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. and to permit an existing boat port (11.10' x 21.15' = 234 sq. ft.) and existing concrete slab to setback 0.65' where 20' is required in addition to a (16' x 16' = 256 sq. ft.) Tiki Hut to setback 6.70' between the rear (west) façade of the principle structure where 10' is required in the Estate Modified Single-Family Residential District (E-M).

Vice Mayor DuBois moved this item forward. Seconded by Councilman Fiore.

Planning & Zoning Director Darby Delsalle provided staff report. He explained the definition of hardship criteria. He further noted that while the Village previously had a shed amnesty program in place, the applicant did not take advantage of the program. He advised that boat port and tiki hut do not meet the hardship criteria, nor would they have been covered by any type of amnesty program.

Councilwoman Lindsay asked if the tiki hut was properly permitted since it appears to have been installed on the property in approximately 2007.

Director Delsalle explained that aerials of the property did not show the tiki hut until 2007; however, with regard to permitting, when a tiki hut is built without electricity, plumbing, they do not require a structural permit if they are built by an approved Indian tribe. He advised that zoning approval would have been required regardless of the contractor.

Councilwoman Lindsay asked if the boat slab and accessory structure were properly permitted. Director Delsalle replied that they were not.

Councilwoman Lindsay asked if staff knew the approximate construction date of those structures. Director Delsalle stated that the structures appear to have been installed prior to the Village's incorporation and would have required permits from Miami-Dade County.

Vice Mayor DuBois asked if tiki huts built by tribes only require setback review.

Director Delsalle answered affirmatively; if there are no electrical, plumbing or mechanical review and if the structure is constructed by Indian tribes of Florida, then only setback review is required.

Councilman Schaffer asked if the current owner had authorized construction of all three items. Director Delsalle stated that he was uncertain.

Attorney Tom David, representing the Cetta family, was recognized. He explained that an anonymous code complaint was submitted against the applicant, which he believes is inappropriate. He stated that the Cetta's had paid contractors to install the structures and the Cetta's had assumed the structures would be permitted properly. He advised that the applicant has been cooperating throughout this process. Attorney David stated that he concurs with the shed variance approval; however, he disagrees with staff analysis on the canvas covered boat port, as the County setback was followed. He argued that Mr. Cetta's tiki hut is constructed on concrete and is out of compliance by only one pole. He asserted that the house has a special condition due to irregular shape that causes the need for variance on the tiki hut.

Disclosures were provided by Council:

Mayor Stanczyk advised that she did not receive any emails, had driven by the property, and can remain unbiased.

Vice Mayor DuBois stated that he did not have any discussions, did not receive any emails, and can remain unbiased.

Councilman Schaffer disclosed that he had met the Cetta's during his recent campaign. The Cetta's informed him that they had a pending application.

Councilman Fiore stated he had no disclosures to offer.

Councilwoman Lindsay advised that she did not have any communications with regard to this application and is familiar with the property.

Councilman Schaffer asked if the Cetta's had contacted the contractor who did not permit the projects correctly. Mr. David Cetta, applicant, stated that he has not had any contact with the contractors in over seven years; however, he knows they were licensed contractors. He stated that, with the exception on the tiki hut, the construction work was performed after Hurricane Andrew.

Mayor Stanczyk opened the public hearing. Mr. Rex Lehman, 17300 SW 87 Court, spoke in support of the application; and, Attorney Tom David asked individuals present who were supportive to stand – approximately 15 people

stood to indicate their support. No one else wished to be heard. The public hearing was closed.

Vice Mayor DuBois stated that it is evident that many tiki hut contractors are informing customers that permits are not required. He stated that the Village should be lenient in this regard, as many property owners rely on their licensed contractors.

Councilman Schaffer concurred, adding that the Cetta's appear to be victims of an unscrupulous contractor.

Mayor Stanczyk expressed that the Council must respond within the law and rely on competent substantial evidence.

Councilwoman Lindsay asked when the slab for the boat port was constructed.

Mr. Cetta replied that it was installed in approximately 1993.

Councilwoman Lindsay remarked that the shed amnesty program was designed to allow people to come forward and seek amnesty. She suggested that the Vice Mayor may wish to consider seeking a similar program for tiki huts. She stated that the Council has clear direction for approval/denial of variances (the specific requirements are contained in Division 30-30.6); and, there must be a justification for approval.

Mr. Cetta remarked that his intention is to improve his property, not depreciate it.

Councilman Fiore opined that the variance is for a minimal amount, which was within the parameters permitted by Miami-Dade prior to incorporation. He stated that there is precedence for approval, as the Council granted a variance in 2011 for an irregular shaped parcel.

Discussion ensued. Attorney David stated that Miami-Dade County allows for these types of car ports, canvass covered with interior side setbacks of two feet. He asserted that the house is irregularly shaped.

Vice Mayor DuBois asked if the car port would be considered an ancillary structure. Attorney David stated he was uncertain. Director Delsalle replied that the code does not enumerate each type of structure, but does address sheds and accessory structures, such as the boat port and tiki hut.

Councilman Fiore asked the Director to provide a definition of a variance. Director Delsalle explained that, generally, it is a procedure that allows the Council to consider circumstances wherein if the code was applied strictly, it would create a hardship.

Discussion ensued concerning the authority to grant a variance.

Councilman Schaffer asked if the measurement was from the house to the post, if there was not an irregular cut-out on the home, would there be sufficient room. Attorney David responded affirmatively.

Vice Mayor DuBois moved to approve the variance concerning the shed. Seconded by Councilwoman Lindsay. All voted in favor. The motion carried unanimously (5-0.)

Councilman Schaffer moved to approve the variance concerning the boat port. Seconded by Vice Mayor DuBois. All voted in favor. The motion carried unanimously (5-0.)

Vice Mayor DuBois moved to approve the variance concerning tiki hut. Seconded by Councilman Schaffer. All voted in favor. The motion carried unanimously (5-0.)

Attorney Boutsis clarified the approval: noting that the Council opined that the property is irregularly shaped and the challenge to the standard is due to the home's shape.

Councilwoman Lindsay moved to approve the matter in its entirety. Seconded by Councilman Schaffer. All voted in favor. The motion carried unanimously (5-0.)

- b. Applicant: SIR GALLOWAY DRY CLEANERS (VPB-12-007)
- Location: 14601 S. Dixie Hwy, Palmetto Bay Zoned: B-1
- Request: Variance of sign regulations to increase the combined allowable sign area of two existing monument signs from 306 sq. ft. to 318 sq. ft. where a maximum of 276 sq. ft. is permitted on a property zoned Limited Business District (B-1)

Councilman Fiore moved this item forward. Seconded by Councilman Schaffer.

The following disclosures were made:

Mayor Stanczyk advised that she visited the property and spoke to Mr. Mills. She stated she can be impartial.

Vice Mayor DuBois stated that he did not have any disclosures.

Councilman Fiore stated that he, too, did not have any disclosures.

Councilman Schaffer advised that he, also, did not have any disclosures.

Councilwoman Lindsay disclosed that she is familiar with the property, and had met with Mr. Kesti and Mr. Mills before there was an application. She stated she can be impartial.

Director Delsalle provided staff report, noting a correction on page 7 of 8, the number should read 306, not 318. He advised that Sir Galloway is asking for an additional 12.5 sq. ft. to the primary monument sign.

Councilwoman Lindsay asked how the 276 square foot number was determined.

Mr. Nunez explained that the number came from the zoning code.

Councilwoman Lindsay asked for the frontage of the parcel on S. Dixie Highway.

Director Delsalle advised that the parcel is two lots, with Offerdahl's being part of the calculation. Mr. Nunez added the linear frontage is 364.53.

Following brief discussion, Director Delsalle explained that the previous application was for an additional detached sign of 36' ft., and there was a whereas clause in the County resolution; however, the language for the Order contained in the resolution did not identify the size.

Mr. Michael Kesti, 18001 Old Cutler, Suite 600, registered lobbyist for Sir Galloway, came forward, and provided a print-out of a presentation to the Council. Vice Mayor DuBois moved to allow the presentation to be accepted and considered. Seconded by Councilman Fiore. Following discussion, as to the timeliness of presenting the materials, the motion carried 3 to 2 (Mayor Stanczyk and Councilwoman Lindsay being opposed.)

Clerk Alexander explained that applicants must provide their own presentation equipment, as the presentation was unable to be displayed from Mr. Nunez's laptop due to technical difficulties.

Mr. Kesti stated that the applicant is seeking an increase in signage, as this is Sir Galloway's second store in Palmetto Bay, but lacks signage for this business from the entrance of the parcel. He asserted that the irregular shape of the parcel blocks the view of the business from the entrance to the parcel, as Sir Galloway's

is blocked from view by the bank and Offerdahl's. He stated that Sir Galloway is the only business in the development without signage at the front entrance. He estimates the business is losing \$12,000 monthly in revenue.

Councilwoman Lindsay stated that when she drove by the property, she noted that the yogurt shop also does not have a sign. She asked Mr. Kesti if Sir Galloway is the only store not visible from US-1.

Mr. Kesti responded that Hallmark and the yogurt store are also not visible from US-1.

Councilwoman Lindsay expressed her concern that the other store owners will shortly be coming forward.

Councilman Schaffer asked why the applicant did not address the lack of signage and visibility with the landlord. Mr. Kesti stated that Mr. Mills took the word of Publix when they stated there would be signage available.

Councilman Schaffer remarked that Mr. Mills should have done his research prior to entering into a lease. He suggested that the Council be cautious not to establish precedence.

Councilman Fiore expressed his support for the application.

Vice Mayor DuBois opined that he did not believe there would be a precedent for the yogurt shop and the Council should consider approval, as lack of signage is damaging the business.

Councilwoman Lindsay remarked that there appears to be a special condition, as the frontage bank is blocking the visibility of the business from US-1. She stated that she believes this circumstance is peculiar to the land and structure.

Councilman Schaffer remarked that the business owner knew of the circumstance prior to entering into a lease. He expressed his opposition.

Mayor Stanczyk asserted that Mr. Kesti advised that the applicant was given permission to use the pylon sign by the landlord; however, the issue arose that there is not sufficient space.

Mr. Kesti stated that the tenants are supportive of this application and he had a signed petition that was misplaced.

Vice Mayor DuBois moved to approve the variance. Seconded by Councilwoman Lindsay. The variance was approved (4 to 1, Councilman Schaffer being the sole opposition.)

4. Adjourn: The meeting was adjourned at 9:19 p.m.

Prepared and submitted by:

Meighan J. Alexander, CMC
Village Clerk

Approved by the Village Council on
this ___ day of February, 2013.

Mayor Shelley Stanczyk

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