

VILLAGE OF PALMETTO BAY, FLORIDA
MINUTES OF THE ZONING HEARING OF MONDAY, APRIL 20, 2015
Village Hall Chambers
9705 E. Hibiscus Street, Palmetto Bay, FL

1. **CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE:** Mayor Flinn called the meeting to order at 7:10 pm. He asked Councilwoman Cunningham to lead the pledge of allegiance. The following members of the Village Council were present:

Mayor Eugene Flinn
Vice Mayor John DuBois
Councilwoman Karyn Cunningham
Councilman Tim Schaffer
Councilwoman Larissa Siegel Lara

The following staff members were present:

Village Manager Ron E. Williams
Village Attorney Eugene Flinn
Village Clerk Meighan Alexander
Zoning Administrator Travis Kendall

2. **READING OF DECORUM STATEMENT/SWEARING IN OF WITNESSES:** Mayor Flinn asked Clerk Alexander to read the Decorum Statement, as follows: 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.

3. **APPROVAL OF MINUTES:**

- a. December 15, 2014 Zoning Hearing
- b. January 20, 2015 Zoning Hearing

Vice Mayor DuBois moved to approve the Minutes, as submitted. Seconded by Councilwoman Siegel Lara. All voted in favor. The Minutes were approved.

4. **Public Hearing Item #1:** The following item is being considered pursuant to Division 30-30.6 of the Village's Land Development Code:

Applicant: Fernando Lora & Wife Nereida
Folio: 33-5023-023-0240
File #: VPB-15-002
Location: 7200 SW 146th Terrace, Palmetto Bay, FL 33158

Minutes of the Zoning Hearing of April 20, 2015

Zoned: E-1

Request: Variance from Section 30-50.6(e) to reduce the required side yard setback along the west side from 20 feet to 7.5 feet for the construction of a guest house.

Mr. Travis Kendall, Zoning Administrator, provided staff report through a PowerPoint presentation. He explained that out of nine criteria used to evaluate this application, five were inconsistent with the current comprehensive plan. He noted that staff had advised the applicant that they may wish to reconsider requesting this hearing, as staff would not be supporting the application and would be recommending denial.

Attorney Lehtinen asked the Council provide disclosures:

Mayor Flinn stated he had received one email from resident Pam Gorman. He stated that he briefly looked at it and noticed it concerned the zoning issue. He noted that he will be fair and impartial and is familiar with the property.

Vice Mayor DuBois stated that he, too, received an email from Ms. Gorman and he had replied, telling her he agreed with her email.

Councilwoman Cunningham disclosed that she, too, received the email, but did not respond. She stated that she can be fair and impartial.

Councilman Schaffer stated that he did not open the email that Ms. Gorman sent. He stated that he will be fair and impartial.

Councilwoman Siegel Lara disclosed that she received the email and will be fair and impartial.

Dr. Fernando Lora, 7200 SW 146 Terrace, stated that his property previously included a guest house until Hurricane Andrew destroyed the structure. He stated that a trailer of the same size he is proposing for a guest house was located on the property until approximately 2012 or 2013, when he was told he had to remove the trailer. He asserted that staff informed him he could build a guest house and that the County building documents indicated that Old Cutler Road was the front of his home. Dr. Lora remarked that Palmetto Bay staff now states that 146 Terrace is the front of his home, which he believe is incorrect, as his entire home would have been illegally constructed due to the lack of frontage.

Mr. Eric Lora, 1800 30 Avenue, Miami Beach, (son of applicant) stated that when his father had submitted plans in the past with Miami-Dade County, there was a plan to add a tennis court and it was determined that the front of the property was Old Cutler Road. He stated that with Old Cutler Road being the front, the plans are valid and satisfy all zoning regulations.

Mayor Flinn asked if Dr. Lora had met with staff. Dr. Lora stated that his architect met with the Village's Zoning staff.

Mr. Lora stated that there was no documentation provided that stated 146 Terrace would be considered the front of the property. He stated that the denial provided by staff provided other locations wherein the guest house would be built, but one location was on top of the septic tank.

Vice Mayor DuBois asked if staff informed Dr. Lora that nothing in the Code permits the Council to grant a variance under these conditions. He asked what avenues did Dr. Lora believe that he had available.

Mr. Lora stated that the County indicated that the front of the property was Old Cutler Road, as identified in a 1973 resolution concerning a tennis court. He asserted that determining the front of the property is up to interpretation and the decision to locate Old Cutler Road as the front is incorrect. He opined that if the frontage is changed, the application meets all criteria.

Councilman Schaffer remarked that the Lora's should have had their architect present, as his professional opinion would have been important in this hearing. He asked Dr. Lora if the address ever included the words "Old Cutler Road".

Mr. Lora stated that it did not, but the County determined that Old Cutler Road was the front.

Mayor Flinn asked when the trailer was installed. Dr. Lora stated that it was installed after August 26, 1992.

Councilwoman Siegel Lara asked if the trailer received a permit. Dr. Lora replied affirmatively; it was permitted after the hurricane.

Vice Mayor DuBois asked if Old Cutler were the front of the home, would the guest house be permitted. Mr. Kendall replied that the Village's code determined that the front is 146 Street, and is consistent with the trend of development on that roadway.

Vice Mayor DuBois stated that if the Village changed the front of the property through code changes, then the property owner may have a non-conforming situation if a disaster destroyed the majority of that home in the future. He suggested that applicant seek deferral in order for him to offer expert testimony.

Councilwoman Siegel Lara asked if the Village determines the front of the property to be Old Cutler, would the applicant be able to construct the guest house. Mr. Kendall replied affirmatively.

Vice Mayor DuBois asked if the County setback requirements in the past would have permitted the structure, he may be inclined to grant that Old Cutler is the front and allow the applicant to be in compliance. Councilman Schaffer concurred.

Attorney Lehtinen stated that if Old Cutler Road is the front, a variance would not be needed; however, the trend of development indicated that 146 Terrace is the front.

Mayor Flinn asked if any letters were received from neighbors, objecting to the application. Mr. Kendall replied that none had been received. Mayor Flinn opened the public hearing.

Caroline Doble, 7240 SW 146 Terrace, stated that she has no objection to a guest house, but a large 4-bedroom guest house creates a two-family property. She opined that it would set a negative precedence if the variance is granted.

Mayor Flinn asked if the sight lines would be problematic. Mrs. Doble stated that she would clearly see the property if a flat roof were constructed and the bedrooms would be directly adjacent to her bedrooms.

Dr. Lora stated that he will put a roof that will accommodate the neighbors. He asserted that her bedrooms will be 50 feet from the guest home. He stated that guest visit four or five weeks per year, on a seasonal basis for an annual Latin festival.

Vice Mayor DuBois asked if lot coverage would be met with the guest house. Mr. Kendall stated that lot coverage is 21% and is just under the requirement.

Discussion ensued regarding the suggestion to defer the hearing. Councilwoman Cunningham and Mayor Flinn remarked that Dr. Lora was aware of the hearing and could have brought his architect.

Mr. Kendall read the definition from the Code (Section 30-40) stating that the frontage would be "the narrowest street frontage shall be considered the front unless the larger street frontage is considered to be more compatible." He noted that while the 1973 Resolution did identify Old Cutler Road as the front; the Village established the code, which now applies.

Vice Mayor DuBois moved to defer the matter to the next zoning hearing. Seconded by Councilwoman Siegel Lara. The motion failed (2-3, Mayor Flinn, Councilman Schaffer, and Councilwoman Cunningham voting against.)

Dr. Lora remarked that he would like to request deferral as he would be able to bring information to support his case. Councilwoman Cunningham replied that he should be prepared this evening. Mayor Flinn concurred, adding that the applicant had received staff's report and was aware that staff would be disapproving the application.

Councilman Schaffer suggested that applicant meet with staff after the hearing and see if they wish to return at a later date.

Councilwoman Siegel Lara asked if there is any way that the applicant could come back on the one fact remaining, which is the way the frontage is now defined.

Attorney Lehtinen stated that by motion, the Council cannot decide to accept a partial application, as it may constitute a due process matter.

Mayor Flinn stated that the motion was already made on behalf of the applicant.

Attorney Lehtinen stated that a Councilmember on the prevailing side of the previous motion to defer could move to reconsider. (No one moved to reconsider.) Attorney Lehtinen stated that a denial of the variance is without prejudice to staff, and staff can review the matter and meet with the applicant.

Vice Mayor DuBois stated staff does not have the authority to make the determination that Old Cutler Road is the front of the property. Mayor Flinn remarked that if appears that if Dr. Lora would be having guests at his home, he would wish to construct an addition on his home, rather than build a large house. He asserted that Dr. Lora should have brought his experts or a land use attorney.

Councilwoman Siegel Lara moved to deny the variance. Seconded by Councilman Schaffer. All voted to deny the variance (5-0.)

The meeting was adjourned at 8:35 pm.

Prepared and submitted by:

Meighan J. Alexander, CMC
Village Clerk

Approved by the Village Council on this _____ day of May, 2015.

Mayor Eugene Flinn

PURSUANT TO FLORIDA STATUTES 286.0105, IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE VILLAGE FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW. WHILE THE FLORIDA STATUTES DO NOT REQUIRE TAPE RECORDINGS, TO THE EXTENT THAT TAPE RECORDINGS ARE MADE, THE TAPES MAY BE REQUESTED FROM THE VILLAGE CLERK FOR REVIEW AND/OR COPYING. THE VILLAGE OF PALMETTO BAY CAN NOT GUARANTEE QUALITY OF ANY RECORDING.