



ITEM 6A

To: Honorable Mayor and Village Council

Date: June 16, 2014
(Deferred from the June 2, 2014
Village Council Meeting)

From: Ron E. Williams, Village Manager

Re: Shed Administrative Variances
Ordinance for 2nd Reading

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AMENDING SECTION 30-30.3(d), "ADMINISTRATIVE (DE MINIMUS) VARIANCES", TO AMEND THE ADMINISTRATIVE VARIANCE REVIEW CRITERIA AND PROCEDURES RELATING TO SHEDS AND SIMILAR ACCESSORY STRUCTURES; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE. [Cosponsored by Mayor Shelly Stanczyk and Council Person Patrick Fiore]

UPDATE SINCE 1st READING:

On May 5, 2014, the proposed ordinance was heard on first hearing. After some discussion the Mayor and Village Council moved to forward the item to second reading with the inclusion of a modification which provides a cut-off date upon which an existing shed would be eligible for consideration. A place holder date of May 5, 2014, was requested until additional research could be completed to determine the date of the Village's last geographic information system (GIS) update of aerial data and the date the application window for the shed amnesty ordinance expired.

The Village Council desired a cut-off date to honor the original intent of the Shed Amnesty Program while avoiding the creation a procedure permitting owners of newer sheds to circumvent recently adopted shed setback standards. The challenge presented therein was to identify a date that could be relied upon to reasonably achieve that desire while being verifiable. As a starting point it is worth noting that the application for the Shed Amnesty program closed on August 2, 2010. The most current layer in the Village's GIS aerial imagery series was created on December 19, 2012 and is labeled Aerial2013. The creation date for next layer in that series, titled Aerial2012, was not available at the time the report was completed. There are no 2010 or 2011 aerial layers within the series. Applying the date of either layer would be acceptable though neither fits neatly into the August 2, 2010 date.

With the exception of the Recommendation Section, the remainder of this report is unchanged since first reading.

BACKGROUND:

On March 19, 2014, during a Committee of the Whole (COW) meeting, the Village Council directed the Village Manager to have staff prepare an administrative variance procedure for sheds and other like structures utilizing criteria consistent with the administrative approval authority provided by the 2009 Shed Amnesty Program (Ordinance No. 09-03). The attached proposed ordinance is in fulfillment of that request.

The discussion during the March 19, 2014, COW was a continuation of other actions taken by the Village Council in an ongoing effort to bring as many nonconforming sheds into compliance within parameters acceptable to Village residents. Such efforts included modification of interior setbacks for sheds 144 square feet or less when located in a residential district, and an increase in approval authority for administrative variance from 5% to 10% of a required interior and rear yard setback. Although those efforts provided a legalization path for some sheds constructed without the benefit of a permit, it still fell short of the scope provided by the original Shed Amnesty Program.

Much of the Village Council's discussion centered around providing relief program consistent with that 2009 action. Initial suggestions envisioned reestablishment of the Shed Amnesty Program, however such a remedy was deemed to be short lived and thus inadequate to address what has been observed to be a longer term code compliance matter. Hence, the suggestion was to provide a long term solution through an administrative variance measure consistent with the standards utilized by the 2009 Shed Amnesty Program. The impact would be to provide a path to legalization without the limitation of a narrow application window associated with an amnesty program.

The 2009 Shed Amnesty Program, among other things, provided for an administrative approval authority for existing, unpermitted sheds 150 square feet in size or smaller, that were sited no closer than three (3) feet to any interior or rear property line. Eligible sheds could not exceed eight (8) feet in height. The proposed administrative variance amendment employs the same criteria. All other sheds built without the benefit of a permit that do not comply with the parameters of this proposed amendment may seek a public hearing variance before the Mayor and Village Council for relief.

ANALYSIS:

The proposed ordinance was reviewed for consistency with the criteria established in Section 30-30.7(b), of the Village's Code of Ordinances. The Background Section provided above and shall be incorporated into each criterion delineated below. The following is a review of those criteria.

Criteria (1): Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service standards and the Village's Concurrency Management Program.

Analysis: The Comprehensive Plan does not address variances.

Finding: Not applicable.

Criteria (2): Whether the proposal is in conformance with all applicable requirements of Chapter 30.

Analysis: See Background Section. There does not appear to be any particular provision of Chapter 30 that conflicts with the proposed ordinance. The proposed modification offers greater flexibility to an applicant seeking relief from provisions of the Code while remaining consistent with a prior directive of the Mayor and Village Council via the Ordinance No. 09-03, AKA Shed Amnesty Ordinance. The proposed ordinance is consistent with the administrative standards previously authorized in the Shed Amnesty Ordinance.

Findings: Consistent.

Criteria (3) Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether the changes support or work against the proposed change in land use policy.

Analysis: See Background Section and Criteria 2. By way of its action in 2009 through the creation of the Shed Amnesty Program, the Mayor and Village Council identified and established development parameters for existing sheds built without the benefit of permits, and within required setbacks. Because the amnesty program only provided for a limited application window, the full impact of the program was limited. The proposed amendment is not as full in scope as the original program for it only seeks to continue the administrative review procedure as therein provided. By establishing the administrative procedures in a more permanent manner, it ensures a more consistent application of the law as originally envisioned in the 2009 program.

Findings: Consistent.

Criteria (4) Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and locations of uses involved, the impact on the adjacent or neighboring properties, consistency with existing development, as well as compatibility with existing and proposed land uses.

Analysis: See Background Section and Criteria 3. Implementation of the proposed amendment will provide for consistency in application of the law as was originally applied in the Shed Amnesty Program for sheds eligible for administrative review.

Finding: Consistent.

Criteria (5) Whether, and the extent to which, the proposal would result in demands on transportation systems, public facilities and service; would exceed the capacity of the facilities and services, existing or programmed, including: transportation, water and

wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services.

Analysis: The proposed amendment does not impact on the above systems as they are principally a function of use and not physical development standards of a structure.

Finding: Not applicable.

Criteria (6) Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetland protection, preservation of groundwater aquifer wildlife habitats, and vegetative communities.

Analysis: The proposed amendment does not impact on the above systems as they are principally a function of use and not physical development standards of a structure.

Finding: Not applicable.

Criteria (7) Whether, and to the extent to which, the proposal would adversely affect the property values in the affected area, or adversely affect the general welfare.

Analysis: See Background Section and Criteria (3) and (4) above. The proposed ordinance does not appear to affect property values or the general welfare.

Findings: Consistent.

Criteria (8) Whether the proposal would result in an orderly and compatible land use pattern. Any positive and negative effects on land use pattern shall be identified.

Analysis: See Background Section and Criteria (3) and (4) above.

Findings: Consistent.

Criteria (9) Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose of Chapter 30.

Analysis: See Background Section Criteria (2), (3) and (4) above. As reflected in the Criteria above, there appears to be no conflict to the public interest.

Findings: Consistent.

Criteria (10) Other matters which the local planning agency or Village Council in its legislative discretion may deem appropriate.

Analysis: As per the direction of the Village Council.

Finding: As determined by the Village Council.

FISCAL/BUDGETARY IMPACT:

There does not appear to be any fiscal or budgetary impact of this amendment.

RECOMMENDATION:

Decision for the Village Council. Any final decision should include a motion to modify the proposed ordinance to reflect a desired cut-off date.



Darby Delsalle, AICP
Planning & Zoning Director

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AMENDING SECTION 30-30.3(d), "ADMINISTRATIVE (DE MINIMUS) VARIANCES", TO AMEND THE ADMINISTRATIVE VARIANCE REVIEW CRITERIA AND PROCEDURES RELATING TO SHEDS AND SIMILAR ACCESSORY STRUCTURES; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE. [Cosponsored by Mayor Shelly Stanczyk and Council Person Patrick Fiore]

WHEREAS, in 2002 the Village of Palmetto Bay incorporated and shortly thereafter adopted Miami-Dade County's Zoning Code for the purpose of regulation land development matters until such time that the Mayor and Village Council could adopt their own code provisions; and

WHEREAS, on February 2, 2009, the Mayor and Village Council adopted Ordinance 09-03, commonly referred to as the "Shed Amnesty Ordinance", whereby sheds built without the benefit of a building permit, whether within required setbacks or not, were given the opportunity to come into building and zoning compliance; with the program authorized to run for a period of 18 months after the adoption of the Ordinance; and

WHEREAS, the Shed Amnesty Ordinance granted administrative approval authority for existing, unpermitted sheds sited no closer than three (3) feet to any interior or rear property line, with all others going before the Mayor and Village Council for variance approval; and

WHEREAS, on August 20, 2009, the Mayor and Village Council adopted Division 30-50, which, among other provisions, provided setback standards for sheds in residential districts which were in some cases, more stringent than that provided by the Miami-Dade County Code; and subsequently amended those provisions on April 7, 2014 restoring the previous shed setback standards; and

WHEREAS, on August 20, 2009, the Mayor and Village Council of the Village of Palmetto Bay created Section 30-30.3(d), entitled "Administrative (de minimus) variances", so as to provide relief from certain provisions of the Village's Land Development Code; and subsequently amended those provisions on January 6, 2014, by expanding the permitted scope of administrative variance requests and adjusting the review criteria to minimize subjective determinations; and

Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, deletions are shown as ~~striketrough~~, and deletions after first reading are shown as ~~double striketrough~~.

WHEREAS, there continues to be numerous existing unpermitted sheds throughout the Village that are no longer eligible to participate in the Shed Amnesty Program, that are within the required setbacks, but are at least three (3) feet from the property line; and

WHEREAS, the Mayor and Village Council desire amend Section 30-30.3(d) to implement a long term strategy to address unpermitted sheds that are no closer than three (3) feet to the side or rear property line in a manner similar to the criteria employed by the Shed Amnesty Ordinance.

BE IT ENACTED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated herein by this reference.

Section 2. Code Amendment. Section 30-30.3(d) of the Code of Ordinances of the Village of Palmetto Bay, Florida, is hereby amended to read as follows:

DIVISION 30-30. DEVELOPMENT APPROVAL PROCEDURES

* * *

Sec. 30-30.3. Administrative development approvals.

* * *

(d) *Administrative (de minimus) variances.* When the literal or strict enforcement of the provisions of the Village's Land Development Code cause unusual, exceptional, unnecessary difficulties or undue hardship or injustice because of the size of the tract, parcel or lot, the topography, the condition or nature of adjoining areas, or the existence of other unusual physical conditions, the planning and zoning director may grant an administrative variance for lot coverage, setback, height, buffer, lot dimension and/or floor area ratio (FAR) requirements in accordance with the following requirements:

* * *

- (5) To approve an administrative variance application, the Department Director shall find:
- (A) No more than two sides of the encroaching construction shall be considered for a setback adjustment (all prior setback variances, administrative adjustments and alternative site development options

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- shall count toward this limitation). The front set back is precluded from using an administrative variance process.
- (B) No prior approved setback, lot coverage or building spacing variance(s), administrative adjustment(s) or alternative site development option(s) shall be further changed by administrative adjustment.
 - (C) The property owner shall certify in writing that any and all easement areas as shown on the recorded plat remain unencumbered by the encroaching construction, unless a release of interest by the easement holder(s) is obtained and submitted prior to permit issuance.
 - (D) The applicant provide written certification from a registered architect or engineer that the existing encroaching construction complies, or can be made to comply with all applicable construction codes, including but not limited to the Florida Building Code, the applicable fire prevention code and other zoning regulations.
 - (E) The proposed accessory structure is a normal and customary accessory residential use.
 - (F) The impacts associated with the deviation requested are adequately mitigated through alternative measures.
 - (G) Protection of natural features, including trees, wetlands, archeological sites and similar circumstances.
 - (H) Conditions and safeguards. In granting an administrative adjustment, the director may prescribe conditions and safeguards deemed necessary to protect the interests served by the underlying zoning district regulations, including, but not limited to: Landscape materials, walls, and fences as required buffering; modification of the orientation or deletion of any openings; modification of site arrangements; and modification of plans.
- (6) ~~Pre-existing~~ Sheds and similar accessory structures that existed prior to May 5, 2014, that are 150 square feet in size or less which do not exceed eight (8) feet in height, shall be granted an administrative variance provided the structure is located no closer than three (3) feet to an interior or rear property line, that the request is consistent 30-30.3(d)(5) above, and that the application includes an affidavit(s) of approval from the property owner(s) that about the property boundary where the reduction is requested.
- (76) The planning and zoning director shall give written notice of his/her preliminary determination regarding the administrative variance to the adjacent property owners and shall hear any objections regarding the

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preliminary determination during a subsequent 30-day period. Administrative (de minimus) variance request for non-residential uses and multifamily residential uses shall be noticed according to Section 30-30.11(o) as per mailing radius for variances. At the conclusion of the 30-day period the Village shall approve, approve with conditions, or deny the administrative variance by written order. Any written objection received from a property owner within the notice radius within the 30-day notice time period shall result in a denial of the request and the applicant may seek a variance as provided under section 30-30. Notice of intent to issue the administrative variance will be posted on the property and noticed on the Village. Posting of the property and notice on the Village web site shall be considered supplementary in nature and a complementary service to the public and shall in no way compromise the outcome of the final disposition of the preliminary decision.

Section 3. Conflicting Provisions. The provisions of the Code of Ordinances of the Village of Palmetto Bay, Florida and all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 4. Severability. The provisions of this Ordinance are declared to be severable, and if any sentence, section, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases of the Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Codification. It is the intention of the Mayor and Village Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Code of Ordinances of the Village of Palmetto Bay, Florida, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. This ordinance shall take effect immediately upon enactment.

First reading: _____

Second reading: _____

PASSED AND ENACTED this _____ day of _____, 2014.

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Attest: _____

Meighan Alexander
Village Clerk

Shelley Stanczyk
Mayor

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

Dexter Lehtinen
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore _____

Council Member Joan Lindsay _____

Council Member Tim Schaffer _____

Vice-Mayor John DuBois _____

Mayor Shelley Stanczyk _____

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